

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





75-2013 AS

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

B

Docket No. 75-2013

UNITED STATES OF AMERICA,

Respondent,

versus

SAMUEL MANARITE,

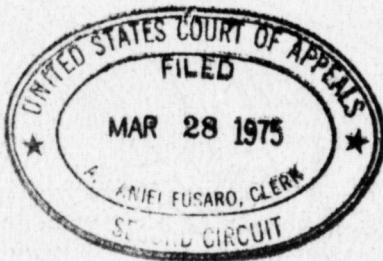
Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX OF APPELLANT

OSCAR B. GOODMAN, ESO.  
Goodman and Snyder  
230 Las Vegas Blvd. South  
Las Vegas, Nevada 89101  
Telephone: (702) 384-5563

Attorney for Appellant



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FOR THE SECOND CIRCUIT

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Attorney for Appellant

TABLE OF CONTENTS

	<u>Page</u>
Docket entries of the United States District Court for the Southern District of New York in United States v. Manarite, 69 Crim. 892 . . . . .	1a
Docket entries of the United States District Court for the Southern District of New York in United States v. Manarite, et al., 69 Crim. 747 . . . . .	4a
Copy of Indictment, United States v. Manarite and Portela. . . . .	19a
Exerpts of Trial Transcript of May 20, 1970, United States v. Manarite, 69 Crim. 892 . . . . .	20a
Exerpts of Trial Transcript of May 19, 20, 21, 1970, United States v. Manarite, 69 Crim. 892. . . . .	34a
Copy of Judgment filed July 16, 1970, United States v. Manarite, 69 Crim. 892 . . . . .	40a
Copy of transcript of sentencing proceedings, November 16, 1970, in People of the State of New York v. Phil Frimet, Docket No. B-16597/68. . . . .	41a
Copy of transcript of sentencing proceedings, United States District Court, Southern District of New York, United States v. Phil Frimet, 69 CR-747, December 8, 1970 . . . . .	45a
Copy of Memorandum and Order of United States District Court for the District of Kansas, Manarite v. Daggett, No. 74-19-C3 . . . . .	52a
Copy of Judgment of United States District Court for the District of Kansas, Manarite v. Daggett, No. 74-19-C3. . . . .	55a
Copy of unpublished Per Curiam Opinion and Judgment of United States Court of Appeals for the Tenth Circuit, Manarite v. Daggett, No. 74-1334 (Appeal from United States District Court judgment in 74-19-C3). . . . .	56a
Copy of receipt for payment of fine, United States v. Manarite, 69 Cr. 892 . . . . .	59a
<b>Copy of Affidavit of Jean Manarite. . . . .</b>	<b>60a</b>
Copy of transcript of telephone conversation of June 28, 1973, between Jean Manarite and Victor Roberts . . . .	62a



TABLE OF CONTENTS (CONTINUED)

	<u>Page</u>
Copy of Affidavit of Jerome L. Merin . . . . .	66a
Copy of Affidavit of Victor Roberts. . . . .	68a
Copy of Opinion and Judgment of United States District Court, Southern District of New York, Palmieri, J., Manarite v. United States, 74 Cr. 2747 E.L.P. . . . .	70a
Notice of Appeal . . . . .	76a

CRIM DOCKET  
UNITED STATES DISTRICT COURT

JUDGE PALMIERI

39 CRIM. 892

D. C. Form No. 103 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	FOR U.S. Title 18 Section 2385
vs.	U.S. Code, Unlawfully in the use of extortion to an extension of credit
SMUEL T. MANARITE	unlawfully threats of violence & other means to cause harm to reputation & property in order to collect an extension of credit
RICHARD J. PORTELLA	XXXXXX
ONE XXXX COUNTY.	
(Description of offense & corrected as of 6/9/70)	

ONLY COPY AVAILABLE  
264-6357  
June 16, 1970  
50 12 7 0 714  
100 B

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISP.
J.S. 2 mailed	Clerk	7-16-70	Magistrate	5	-
J.S. 3 mailed	Marshal	7-17-70	U.S. Marshal	250	-
Violation	Docket fee	7-11-70	U.S. Marshal		200
Title					
Sec.					
Complaint	Stephen H. Scott Special Atty				

DATE	PROCEEDINGS
12-16-69	Filed Indictment, & Notice of Assignment pursuant to Rule 2(c) of the General Rules of this Court the above case has been assigned to Judge PALMIERI.
1-6-70	Before Judge Palmieri, (Attorneys' present) Deft. MANARITE pleads "Not Guilty" to Count 1. Bail continued at \$25,000., previously fixed by U. S. Commissioner Deft. PORTELLA. Produced on writ. Pleads "Not Guilty" to Count 1. Bail fixed in the sum of \$5,000. Writ adjourned to February 10, 1970. Feb. 10, 1970, 1:00 PM for motions. Both Defendants' ordered fingerprinted. PALMIERI.
2-3-70	Filed Notice of Motion and Affidavit for discovery and inspection; for Bill of Particulars; for an order permitting the defendant to examine and inspect the Grand Jury minutes. & memo of 1
1-30-70	Richard J. Portella-Filed affdvt & notice of motion for Disc. & Inspect. ret. 2
2-6-70	Filed stipulation extending the return date of motions to Feb. 17, 1970. PALMIERI.
2-16-70	Filed affdvt of Milton J. Carp, Special Atty for the U.S. Dept. of Justice in opposition to deft's motions for Discovery & inspect. b/n, to inspect G/J minutes & memorandum of law

(over)



DATE	PROCEEDINGS
	SAMUEL F. MANARITE's
2-16-70	Filed affdvt of Milton J. Carp, Special Atty with the U.S. Dept. of Justice in opposit. to def't's motions for discovery & inspection, B/P, for the Grand Jury minutes & memorandum of law.
2-18-70	SAMUEL F. MANARITE: Filed memo <del>xx</del> endorsed on motion filed 2-3-70 - Motion denied except to extent consented to by the Government & upon representations of the Govt. per Stephen H. Scott, Esq, Asst. U. S. Atty with respect to time and substance of Government's disclosures. It is so ordered. See minutes of 2-17-70- PALMIERI, J. (mailed notice)
2-18-70	RICHARD J. PORTELA: Filed memo endorsed on motion filed 1-30-70- Motions denied except extent consented to by the Government and upon representations of the Government per Stephen H. Scott, Asst. U.S. Atty with respect to time and substances of Governments disclosure. See minutes of 2-17-70. It is so ordered. PALMIERI, J. (mailed notice)
3-2-70	RICHARD J. PORTELA: Filed B/P
3-2-70	SAMUEL F. MANARITE: Filed B/P
APR 14 1970	Filed remand dated - R. O. B. 3-31-70
5-19-70.	Before Palmieri, Judge-(Atty. present) Trial began as to both defts. with a jury.
5-20-70.	Trial continued.
5-21-70.	Trial continued and concluded. Jury finds the deft. MANARITE "GUILTY" and the deft. PORTELA "NOT GUILTY". Bail discharged as to PORTELA. Sentence on deft. MANARITE: July 2, 1970 at 4:15 P.M. Pre-sentence investigation ordered. Bail continued. PALMIERI, J.
5-28-70	Filed Transcript of record of proceedings, dated 5-19, 20, 21-70
6-30-70	SAMUEL MANARITE - Filed notice of motion for judgment of Acquittal or arrest of Judgment, or for a New Trial. W/memo of law. (Palmieri, J.)
7-2-70	Filed affdvt. of Stephen H. Scott, AUSA in opposition to above motion (Palmieri, J.)
7-2-70	Filed Govt's. memorandum of law in opposition to above motion (Palmieri, J.)
7-9-70	SAMUEL F. MANARITE (Deft. not present) - Bench Warrant ordered, and forfeiture of bail. Court stays the arrest warrant and forfeiture of bail until 2:30 PM, 7/10/70 and directs the deft. to surrender to the U.S. Marshal, S.D. of NY. PALMIERI, J.
7-9-70	MANARITE - Bench Warrant Issued
7-10-70	Deft S. Manarite surrenders to U.S. Marshal pending sentence, Deft. remanded (no Bail) PALMIERI, J.
7-16-70	SAMUEL MANARITE - Filed memo endorsed on motion filed 6-30-70. Motion denied, after argument in all respects. It is so Ordered. PALMIERI, J. (mailed notice)
7-16-70	SAMUEL F. MANARITE - Filed Judgment #20,868 (at v. present) It is adjudged that the deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of FIFTEEN (15) YEARS and FINED \$5,000. The deft. is to stand committed until the fine is paid or he is otherwise discharged according to law. PALMIERI, J.

Cont'd. on page 3



DATE	PROCEEDINGS
7-16-70	SAMUEL F. MANARITE - Commitment and copies issued.
7-16-70	SAMUEL MANARITE - Filed Notice of Appeal from the judgment, and sentence. \$500 P.
7-17-70	SAMUEL F. MANARITE - Filed Affidavit of Stephen H. Scott, Special Atty. with the U.S. Dept. of Justice.
7-25-70	SAMUEL MANARITE - filed remand dated 7-10-70
8-7-70	Filed notice of record certified and transmitted to U.S.C.A.
8-7-70	Filed affdvt. of Joel M. Friedman AUSA in support of Govt's. Motion for Forfeiture of Bail.
* 8-6-70	MANARITE <i>Filed Commitment &amp; order return, Deft. Delivered to the Prison</i>
8-13-70	Filed affdvt. of Samuel & Jean Manarite dtd. 7-24-70 and 7-20-70 respectively
8-13-70	Filed Memorandum - PALMIERI, J. <i>Accordingly the deft. has partially forfeited his bail and is assessed the sum of \$250.00 therefor. Since the Deft. is in custody and presently serving his sentence the balance of the bail is directed to be remitted and the indemnitors and sureties released from any further obligation upon payment of the \$250.00 as aforesaid" So Ordered. PALMIERI, (mailed notice)</i>
10-16-70	<i>Filed Transcript of record of proceedings, dated 7-9-70</i>
11-5-70	<i>Filed Transcript of record of proceedings, dated 7-16-70</i>
12-15-70	SAMUEL MANARITE- Filed U.S.C.A. (opinion) judgment affirming the judgment of the U.S.D.C., dated 11-19-70. Judgment entered 12-16-70
5-26-71	SAMUEL MANARITE - Filed judgment of the Supreme Court of the U.S., that the petition for a Writ of Certiorari is denied.
9-8-71	MANARITE- filed notice of motion for reduction of sentence and affidavit. PALMIERI, J.
9-21-71	MANARITE- filed affidvit of J. Friedman, Special Atty in opposition to deft's motion to reduce sentence. PALMIERI, J.
9-15-71	Filed memo. endorsed on deft. Manarite's motion to reduce sentence filed 9-8-71----Motion denied, <i>ONLY COPY AVAILABLE</i> is so ordered. PALMIERI, J.

CRIMINAL DOCKET  
UNITED STATES DISTRICT COURT

69 CRIM. 747

D. C. Form No. 166 Rev.

TITLE OF CASE			ATTORNEYS
THE UNITED STATES			For the S: T. 18, U.S.C. Sec.
vs.			1465 and 2 - Unlawfully
1. SAMUEL P. MANARITE	Cts. 1 and 12		transporting in interstate
2. LUIS MARTI	Cts. 1, 2, 9, 11 & 13		commerce for sale & distrib
3. RICHARD J. PORTELA	Cts. 1 thru 10, 12 & 13		ution, obscene, lewd, &
4. CAROL ANN PORTELA	Cts. 1, 4, 5, 7, 10 & 13		f filthy playing cards (ct. 2)
5. DOMINICK CONSTANTINO	Cts. 1, 3 & 9		films (cts. 3, 9, 11 & 13),
6. PAUL OLF	Cts. 1, 2, 4, 5, 7 & 9		magazines (cts. 4, 5, 6, 7, 8,
7. GERALD LOUIS CONSTANZA	Cts. 1 & 9		10 & 12)
8. PHIL PRINET	Cts. 1, 2, 4, 5, 7, 10 & 12		For Defendant: T. 18, U.S.C. Sec.
9. FRANK J. DEL ROSSO JR.	Cts. 1, 6 & 8		271 - Conspiring so to do.
10. SALVATORE PUNTA SECCA	Cts. 1 & 12		(Count 1)
11. MAX BORNSTEIN	Cts. 1 & 13		
12. JAMES KELLY	Cts. 1 & 12		THIRTEEN COUNTS
13. FERRIS JACOB ALEXANDER	Cts. 1, 2, 4, 5, 6, 7, & 10		
14. EDWARD JACOB ALEXANDER	Cts. 1, 2, 4, 5, 6, 7 & 10		
15. VINNY CACACE	Cts. 1 & 12		

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISE.
J.S. 2 mailed	Clerk	12/1/70	P. M. G.	✓	
J.S. 3 mailed 4, 1, 4, 10, 11	Marshal	12/1/70	H. Takamanga	✓	
Violation	Docket fee	12/4/70	U.S. Marshal	✓	
Title P. Constantino	125,000	12/4/70	U.S. Marshal	✓	
R. J. Portela	430,000	12/7/70	P. M. G.	✓	
Sec. F. J. Alexander	120,000	12/8/70	U.S. Marshal	✓	
L. Marti	114,000				

DATE	PROCEEDINGS
10-27-69	Filed indictment.
10-27-69	FERRIS JACOB ALEXANDER, EDWARD JACOB ALEXANDER, VINNY CACACE: Warrants of arrest ordered. COOPER, J.
10-27-69	VINNY CACACE: Deft. brought to Court on a warrant. Pleading adj. to 11-19-69. Deft. ordered fingerprinted. Released on own recognizance COOPER, J.
10-27-69	EDWARD JACOB ALEXANDER) Bench warrants issued. FERRIS JACOB ALEXANDER) VINNY CACACE)
10-29-69	SALVATORE PUNTA SECCA-Filed Appearance bond in the sum of \$2,500.00. Conditions of bond are that the deft. does not depart District of New Jersey or S.D.N.Y. Deft. address 8 Sylvan Road Fairfield, N.J. bond dtd 7-23-69.
10-29-69	SALVATORE PUNTA SECCA-Filed warrant of arrest returned executed 7-23-69.
10-29-69	EXAMINER ALL DEFTS-Filed Complaint before U.S. Commissioner Noel Bisio.

Cont'd on page 2



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62 Cr. 747

[Page 2]

62 Cr. 747

DATE	PROCEEDINGS
10-29-69	MAX BORNSTEIN-Filed Appearance bond in the sum of \$1,000.00. conditions of the bond are that the deft does not depart the District of New Jersey or the S.D.N.Y. Defts address 320 bulger Ave, New Milford, N.J. bond dtd 7-23-69.
10-29-69	MAX BORNSTEIN-Filed Warrant for arrest returned executed on 7-23-69 by U.S. Marshals & filed copy of complaint for ALL DEFTS.
11-14-69	RICHARD J. PORTELA: Filed affdvt of John H. Adams, Special Atty, United States Department of Justice for W/H/C AD Pros. writ iss. ret. 11-19-69
11-14-69	VINNY <del>XXX</del> CACACE: Filed Warrant for arrest of deft. dtd. 10-27-69 & returned executed on 10-27-69
11-19-69	SAMUEL F. MANARITE-Deft PLEADS NOT GUILTY, Bail continued. \$5,000. LUIS MARTI-Deft PLEADS NOT GUILTY, Bail continued \$5,000. CAROL ANN PORTELA-Deft PLEADS NOT GUILTY Bail continued \$1,000.00. Personal Recognizance Bond. PAUL WOLF-Deft PLEADS NOT GUILTY Bail continued \$1,000. PHIL FRIMET-Deft PLEADS NOT GUILTY Bail continued. \$5,000. Personal Recognizance Bond. MAX BORNSTEIN-DEFT PLEADS NOT GUILTY. Bail continued \$1,000. VINNY CACACE-Deft PLEADS NOT GUILTY-released on own recognizance. Motion as to all above defts Ret: 1-20-69. GERALD LOUIS-Deft appears in Court without his atty-Pleading adjd to 12-10-69. Deft released on own recognizance. JAMES KELLY-Deft appears in Court without his atty. Pleading adjd to 12-10-69. Bail continued \$1,000. Personal Recognizance Bond. FRANKEL, J.
11-29-69	PAUL WOLF) Filed notice of Appearance by David Mockowitz, 261 Broadway, NYC RE 3-42 MAX BERNSTEIN)
11-20-69	SAMUEL F. MANARITE: Filed notice of appearance by Abraham H. Brodsky, 111 B'way, NYC RE 2-6548
11-20-69	PHIL FRIMET: Filed notice of appearance by Victor Roberts, HOLB'way, NYC CA 6-4525
11-20-69	VINNY CACACE: Filed notice of a pearance by Arnold E. Wallach, 299 B'way, NYC 227-0959
11-20-69	RICHARD PORTELA) Filed notice of appearance by Jerome Lewis, 250 Broadway, N.Y.C. CAROL PORTELA) RE 2-6636
11-20-69	LUIS MARTI: Filed notice of appearance by <del>XXXXXXXXXXXXXXXXXXXX</del> Patrick M. Hall, 36 West 11th St., NYC 986-6688
12-1-69	RICHARD J. PORTELA-Docket W/H/C AD PROS writ returned by U.S. Marshals executed on 11-17-69.
12-2-69	FERRIS J. ALEXANDER & EDWARD JACOB ALEXANDER-Filed record of proceedings from the District of Minnesota before U.S. Commissioner Bernard G. Zimfer.
12-2-69	ferris J ALEXANDER-Filed warrant for arrest returned executed on 10/17/69, by U.S. Marshals
12-2-69	EDWARD J. ALEXANDER-Filed warrant for arrest returned executed by U.S Marshals on 10-30-69.

5a Cont'd on page 3.

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[Page 3]

62 Cr. 747

DATE	PROCEEDINGS
12-2-69	FERRIS J. ALEXANDER-Filed Appearance bond in the sum of \$5,000.00. by the U.S. Bonding Insurance company. 326 South 4th Minneapolis Minnesota, Defts address 1608-Elkold Road.
12-2-69	EDWARD ALEXANDER-Filed Appearance bond in the sum of \$5,000.00. by the U.S. Bonding Insurance company. 326 South 4th Street, Minneapolis Minnesota, Defts address 7417 Minnetonka Blvd. Minneapolis Minnesota.
12-4-69	FRANK J. DEL ROSSO Jr.-Filed affdvt for W/U/C AD PROS by A.U.S.A. John H. Adams writ issued Ret: 12-10-69.
12-10-69	DOMINICK CONSTANTINO- John T. Cumiskey, Jr. Esq, admitted Pro Hac Vice. Pleads NOT GUILTY. Bail continued (\$2,500.) Deft. ordered fingerprinted. Motions ret. 1-20-69.
	SALVATORE PUNTA SECCA- Milton Adler, Esq, assigned as atty under CJA, John P. Curley of counsel. Pleading adj'd to 12-17-69. Deft. ordered. fingerprinted. (bail continued \$2,500.)
	JAMES KELLY- Appears without counsel-Court Directs entry of plea of NOT GUILTY. Deft. directed to appear on 12-17-69 unless his Attorney has filed notice of appearance. Deft. ordered. fingerprinted. Released on own recognizance. MANSFIELD, J.
12-11-69	DOMINICK CONSTANTINO- Filed notice of appearance by John T. Cumiskey, Jr., 205 Church St., New Haven, Conn. 203-772-1000 or 203 -562-6280
12-12-69	RICHARD J. PORTELA - Aff. for W/H/C AD Pros. Writ. Issued Ret. 12/17/69 Afficavit 62CR.747 AUSA JOHN H. ADAMS.
12-17-69	GERALD LOUIS CONSTANZA- Pleads NOT GUILTY. Motions ret. 1-20-70. Deft. ordered fingerprinted. Bail posted in sum of \$2,500. in Nevada to be transferred to this district to cover this indictment.
	FRANK J. DEL ROSSO, JR. Produced on a writ. Pleads NOT GUILTY. Motions and writ adj'd to 1-20-70.
	SALVATORE PUNTA SECCA Milton Adler, Esq. assigned as Atty under CJA by Commr. John P. Curley of counsel. Pleads NOT GUILTY. Motions adj'd to 1-20-70. Bail fixed at \$2,500 personal recognizance bond. Deft. <del>is</del> released on own recognizance until 4 PM to day to post bail.
	FERRIS JACOB ALEXANDER) EDWARD JACOB ALEXANDER) Bench warrants vacated. Pleading adj'd to 12-23-69.
	RICHARD J. PORTELA- Adj to 12-23-69 for pleading. Deft. not present and to be produced on a writ. MANSFIELD, J.
12-17-69	SALVATORE PUNTA SECCA-Filed Unsecured Personal Recognizance Bond in the sum of \$2,500.00 conditions of bond set the deft. home at 1608-Elkold Rd. S.D.N.Y. on the District of New Jersey. Deft. address 8 Spring Road, L.I.
12-19-69	FRANK DEL ROSSO - Notice of appearance Atty- Joseph A. Hochlgin, 147 W. Merrick Rd Freeport, L.I.N.Y. 516-FR9-0505

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69 Cr. 747

RULE 2 - CASES ASSIGNED TO JUDGE MAG. HANON

[Page 4]

DATE	PROCEEDINGS
12-19-69	RICHARD PORTELA) NOTICE OF APPEARANCE - Atty. James M. La Rosa 115 Broadway, N.Y., N.Y. CAROL PORTELA ) 212 - Re-2-5600
12-19-69	JAMES KELLY - Notice of Appearance - Atty - Stanford H. Franklin, 506 Equitable Bldg. (301-665-3800) Baltimore, Md. 21202 -
12-19-69	RICHARD J. PORTELA - Affidavit - Writ of Habeas corpus ad prosequendum issued - Atty - John Adams.
12-23-69	RICHARD J. PORTELA (Atty Present) - Deft. Pleads NOT GUILTY - Writ Adj. to 1/6/70 Warrant issued as a detainer. Deft. Ordered fingerprinted - Ferris Jacob Alexander ) Edward Jacob Alexander - Pleadings Adj. to 1/6/70 MANSFIELD, J.
12-18-69	SAMUEL MANARITE - Order to disburse Cash Bail and Appearance Bond from U.S.D.C. of Nevada.
12-23-69	RICHARD J. PORTELA: Bench Warrant issued
12-24-69	RICHARD J. PORTELA: Filed affdvt of Stephen H. Scott for W/H/C Ad Pros.
12-29-69	Filed Transcript, dated 12/23/69
12-30-69	GERALD LOUIS CONSTANZA - Notice of appearance Atty Robert S. Arcone, 744 Broad St. Newark, N.J. 201-643-3200
12-29-69	RICHARD J. PORTELA - Filed Writ of H/C AD PROS- executed Dec. 12, 1969 MANSFIELD, J.
1-2-70	GERALD L. CONSTANZA- Filed notice of appearance by Andrew Wallace, Esq. 61 Broadway NYC 212-269-8255
1-6-70	SAMUEL F. MANARITE - Filed Appearance Bond - \$5,000., Public Service Mutual Ins. Co. Surety. (E.N. Bishop, U.S. Comm'r)
1-6-70	FERRIS JACOB ALEXANDER) EDWARD JACOB ALEXANDER) (Keith D. Kennedy, Esq, admitted pro hac vice) Defts. stand mute & Court directs entry of plea of NOT GUILTY. Bails continued (\$5,000.00) Defts. ordered. fingerprinted. Motions ret. 1-20-70 Mc LEAN, J.
1-7-70	FERRIS JACOB ALEXANDER) Filed notice of motion for special appearance & to dismiss for EDWARD JACOB ALEXANDER ) lack of jurisdiction * memo endorsed- Motion denied after argument- o ordered- MC LEAN, J.
1-7-70	EDWARD JACOB ALEXANDER) Notified to appear - Atty Keith D. Kennedy, 1115 Plymouth Bldg. FERRIS JACOB ALEXANDER) Minneapolis Minn. 55402 - (612-336-8410
1-8-70	Filed Memorandum of Law in Support of Motion Made by James Kelley for a change of Venue and Severance. Filed Notice of Motion and Affidavit directing that the place of trial be changed from the S.D. of New York to the District of Maryland, together with such other relief as this Court may seem just and proper. Ret. Jan. 20, 1970.
1-8-70	Filed Affidavit and Notice of Motion for Defendant Vinny Cacace, to serve a bill of particulars, the materials involved in counts one and twelfth of said indictment.
1-8-70	Filed Memorandum of Law in Support of Motions made in Behalf of Vinny Cacace.

7a

continued on Page 5

DATE	PROCEEDINGS
1-15-70	GERALD LEWIS COSTANZA: Filed commissioner's bail bond from the District of Nevada, in the sum of \$2,500.00 dtd. 7-23-69
1-20-70	SALVATORE PUNTA SECCA- Filed CJA Form #2 & order appointing Milton Adler, by John P. Curley rm 1601 (mailed copy to Adm. Off. Wash. D.C.) MC LEAN, J.
1-26-70	Filed Order that the entitled action is hereby referred to Hon. Lloyd F. MacMahon, U. S. D. J. for all purposes. SUGARMAN, J.
2-24-70	RICHARD J. PORTELA) CAROL ANN PORTELA) Filed affdvt & notice of motion for discovery & inspection & memorandum of law ret. 3-31-70 <i>(sent to Judge MacMahon)</i>
2-24-70	VINNY CACACE: motion filed 1-8-70 for B/P, is respectfully referred to Judge MAC MAHON, with his consent WEINFELD, J.
2-24-70	JAMES KELLEY: <del>XXXX</del> motion filed 1-8-70 for severance counts 2 and 12 of the indictment is respectfully referred to Judge MAC MAHON with his consent. WEINFELD, J.
3-3-70	PAUL WOLF ET AL: Filed affdvt & notice of motion for discovery & inspection, to produce and copy, suppressing statements, dismiss indictment, inspect Grand Jury minutes, b/p etc. <i>(sent to Judge MacMahon)</i>
3-3-70	LUIS MARTI: Filed affdvt. & notice of motion dismissing indictment, severance, suppress for B/P to inspect & copy <i>(sent to Judge MacMahon)</i>
3-16-70	The within motion for a severance is denied without prejudice to renewal if any problem under Bruton V. U.S.A. 391 U.S. 123 (1968), arises upon the trial or other hearings and denied with prejudice on the the ground that Cacace is named in only two counts of the indictment. So Ordered. MAC MAHON, J.
3-12-70	The within motion for change of Venue and Severance are in all respects denied. Counsel is granted ten (10) days within which to make any motions he deems appropriate. <i>Card mailed</i> MAC MAHON, J.
3-18-70	GERALD LEWIS COSTANZA - Filed defendant's consent to transfer cas to the District of Nevada for plea and sentence pursuant to Rule 20.
3-18-70	Gerald Lewis Costanza - Ordered transferred to the District of Nevada for plea and sentence pursuant to Rule 20. (Papers mailed to Clerk, Dist. of Nevada)
3-20-70	RICHARD J. PORTELA) Filed affdvt & notice of motion to suppress & memorandum CAROL ANN PORTELA) of law - ret. 3-31-70 <i>(MacMahon, J.)</i>
3-26-70	GERALD LEWIS COSTANZA- Filed Appearance bond in the sum of \$2,500.00 for the SDNY and Dist. of Nevada, by Public Service Mutual Ins. Co., <del>att.</del> before Commr. Earle N. Bishopp. <i>Sent to Dist of Nevada per request Copy in file</i>
3-31-70	RICHARD J. PORTELA (atty present) Deft's produced on a warrant. Hearing held on application for bail. Bail of \$5,000.00 on 69 Cr. 892ELP is to be rewritten to cover this indictment & to be posted before NOON (12:00) 4-1-70. Discharged from custody of U.S. Marshal. MAC MAHON, J.
4-2-70	RICHARD J. PORTELA- Filed Appearance bond, dtd. 4-2-70, The Stuyvesant Ins. Co. Amt. \$5,000.00, MacMAHON, J.



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Rule 2 - CASE ASSIGNED TO JUDGE MAC MAHON

69 Cr. 747

[Page 6]

69 Cr. 747

DATE	PROCEEDINGS
4-3-70	Filed CJA Form # 2, Order appointing counsel, Howard L. Jacobs, Esq., 845 Third Ave. NYC. PL-9-4600. (Copy mailed to Wash. D.C.) MAC MAHON, J.
4-3-70	Filed Memorandum - Defts. motions for B/P & Discovery, granted in PART & denied in PART. Evidentiary Hearing on motion to suppress held for April 9, 1970, at 10:30 a.m. in Court room 518. (See Memo) (No Mailed) MacMAHON, J.
4-8-70	GERALD L. COSTANZA - Filed receipt of record from Las Vegas.
4-9-70	Hearing on motion's to suppress (re. Defts. R. PORTELA, C. PORTELA, M. BORNSTEIN, & P. WOLF) Decision reserved. MAC MAHON, J.
4-14-70	RICHARD J. PORTELA - Filed copy of writ of H/C Ad Pros. dtd. 12-18-69 & returned endorsed "Writ discharged- RYAN, J." dtd. 3-24-70
4-14-70	<i>Richard J. Portela</i> Filed discharge dated 3-31-70
4-14-70	Filed warrant for arrest of RICHARD J. PORTELA, dtd. 12-23-69, and M/R executed 1-6-70.
4-23-70	Defts' memorandum of law <i>(Mrs. Mahon)</i>
5-12-70	<del>Filed</del> Transcript of record of proceedings, dated 3-12-70
6-1-70	MAX BORNSTEIN: Filed list of items seized from Deft. at time of arrest.
6-30-70	Filed defts. memorandum of law
6-30-70	Filed Govt's. memorandum of law
7-1-70	Filed order that the time within which the Govt. must comply with the Said Pretrial order is extended to July 15, 1970. MAC MAHON, J.
7-15-70	Filed Bill of Particulars
8-17-70	Filed transcript of record of proceedings dtd. 1-6-70
9-15-70	Filed Supplemental B/P. <i>(Mrs. Mahon)</i>
9-16-70	DOMINICK CONSTANTINO - Filed motion of John T. Cumiskey, Jr. to withdraw as attorney of record on behalf of defendant.
9-22-70.	Filed B/P of Stephen H. Scott, Special Attorney of the U.S. Department of Justice.
9-23-70.	Filed memo. endorsed on motion filed 9/16/70. ***On March 12, 1970, this criminal action was set for trial peremptorily for Oct. 5, 1970. Counsel for defendant DOMINICK CONSTANTINO, John T. Cumiskey, Jr., was notified of that fact shortly thereafter. At no time since then has Mr. Cumiskey advised this court of his desire to be relieved until the filing of the instant motion dated 9/15/70. Manifestly, the application comes too late in this multidefendant conspiracy case. Accordingly, the within motion to withdraw appearance is in all respects DENIED. (see memo. in file) (mailed notice) MacMAHON, J.
9-30-70.	Luis Marti <i>8</i> Filed Affidavit and motion to reargue portions of the motions F.J. and E. J. Alexander - originally made in this case. <i>11/24/71</i>

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[Page #6]

DATE	PROCEEDINGS
9-30-70.	Samuel R. Manarite- Filed copy of affidavit for Writ of H/C Pros. Writ issued ret. 10/5/70.
10-2-70	<del>Samuel R. Manarite</del> Max Bornstein- Filed notice of appearance of Melvin N. Fine, 24 Church St., Patterson, N.J. Tel. (201) MU 4-1138
10-6-70.	Samuel Manarite- Filed C.J.A. Form # 2 order appointing counsel William S. Ellis, Esc 51 E. 42nd St. NYC (867-8183) (mailed copy to Adm. Off. Wash., D.C.)
* 10-5-70	Deft. Del Rosso produced in Court on a Writ form Sing Sing.
10-5-70.	FRIMET & DEL ROSSO, JR.-Withdraws pleas of not guilty and Pleads Guilty to count 1 only. Pre sentence investigation ordered. Sentence adjourned Sine Die. Deft. Del Rosso remanded. Deft. Frimet bail continue MACMAHON, J.
10-5-70.	Government moves for Issuance of bench warrant and bail forfeiture as to deft. WOLF GRANTED. MACMAHON, J.
10-5-70.	Government moves to sever defts. WOLF, FRIMET, DEL ROSSO, KELLEY, EDWARD JACOB ALEXANDER & CACACE. GRANTED.
10-5-70.	S.F. Manarite- Abraham Brodsky, Esq. relieved as attorney for deft.
10-5-70.	Constantino- John Connisky, Esq. relieved as attorney for deft.
10-5-70.	Deft. Manarite produced in Court on a Writ form Leavenworth, Kansas.
10-5-70.	Jury Trial begun before Mac Mahon, Judge. Selection of jury as to defts. Manarite, Marti, Richard & Carol Portela, Constantino Ferris Alexander, Puntasecca and Bornstein.
10-6-70.	Trial continued. Jury selection continued. William S. Ellis, Esq. assigned as Atty. under C.J.A. for deft. MANARITE. Order signed and filed.
10-7-70.	Trial continued.
10-8-70	Trial continued.
10-9-70.	Trial continued.
10-9-70	Trial continued. Hearing on suppression of evidence held & concluded. <span style="float: right;">Motion granted</span> //Luis Marti//
10-13-70.	Filed affidavit of Mr. Friedman, Special Attorney in support of examination and Order dated and signed by Judge Mac Mahon*** Ordered that Luis Marti be examined by Dr. P. Hilarzo, for determination of deft's physical condition to be present at trial and findings submitted to Mac Mahon, J. 10-9-70 at 5 P.M. by telephone and later written confirmation. (see file)
10-13-70.	Trial continued
10-14-70.	Trial continued
10-15-70.	Trial continued
10-16-70.	Trial continued



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69 Cr.747

[Page #7]

69 Cr. 747

DATE	PROCEEDINGS
10-19-70	Trial continued. Gov't moves to dismiss counts 3,4,6,9, & 11-Motion Granted.
10-20-70	Trial continued. Deft.Manarite moves to dismiss cts.1 & 2 - Denied. Deft.Marti moves to dismiss counts 1 & 13-Denied.Defts.Richard & Carol Portela move to dismiss Richard Portela on cts.1,2,5,7,8,10,12 & 13-Denied. Carol Portela on cts. 1,5,7,10 & 13. Motion Grnated on cts. 7 & 10. Dec.Res. as to count 13 as to Carol Portela. Deft.Constantino moves b dismiss count 1-Denied. Deft.Puntasecca moves to dismiss cts.1 & 12-Denied. Deft.Bornstein moves to dismiss cts.1& 13-denied. Deft.Alexander moves to dismiss counts 1,2,5,7& 10-Denied.
10-21-70	Trial continued.
10-22-70	Trial continued. Deft.Carol Portela moves to dismiss count 13-Motion Granted.
10-23-70 *	Trial continued. (see page 8)
10-26-70	FRANK J. DEL ROSSO-Filed writ of H/C ad Pros-writ satisfied 10-15-70.
10-27-70	SAMUEL R. MANARITE & SALVATORE PUNTASECCA - Filed Order that a copy of the transcribed stenographic minutes of the trial be provided daily, copy to William Ellis and John P. Curley, Esq., in forma pauperis.(notice mailed) <span style="float:right;">MacMAHON, J..</span>
10-27-70	<del>XXXXXXXXXXXXX Filed Judgment (attty present) It Is Adjudged that the deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of ELCHTEEN (18) MONTHS on count 1 to run CONSECUTIVELY to and to begin after service of the sentence the deft. is presently serving on indictment 69 Cr. 992. Deft. is FINED \$5,000. on count 1. Fine is to be paid or the deft. is to stand comaitted until the fine is paid or he is otherwise discharged according to law.</del> <span style="float:right;"><del>MacMAHON, J.</del></span> Commitment and copies issued.
10-28-70	SAMUEL F. MANARITE- Filed Judgment (atty present) It Is Adjudged that the deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of EIGHTEEN (18) MONTHS on count 1 to run CONSECUTIVELY to and to begin after service of the sentence the deft. is presently serving on indictment 69 Cr. 992. Deft. is FINED \$5,000. on count 1. Fine is to be paid or the deft. is to stand comaitted until the fine is paid or he is otherwise discharged according to law. <span style="float:right;">MacMAHON, J.</span> Commitment and copies issued.
	( cont'd. on page 8 )

D. C. 109 Criminal & Bankruptcy Continuation Sheet



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DATE	PROCEEDINGS
	CERTIFY that Mr. Ellis be allowed the amount of \$1,596.25 as fair compensation for protracted representation. He, therefore, direct the Clerk of this court to file this certification and supporting papers, within (10 days) with the Chief Judge of the USCA. (see memo on file) <i>Refer sent to Chief Judge Sullivan</i>
11-17-70	SAMUEL MANARITE- Filed notice of appearance by William S. Ellis 51 E. 42nd St., N.Y.C. 10017, Phone 867-0180.
11-20-70	RICHARD PORTELLA- Filed affdvt. and notice of motion enlarging bail limits. <i>Memo. 11/20/70, J.</i>
11-24-70.	Portela- Hearing held on deft. 's motion to extend bail limits. Motion Denied without prejudice to either side and to renewal motions on any of the sentence. <i>MACMAHON, J.</i>
11-24-70	Portela- Filed memo. endorsed on motion to extend bail limits-***Motion denied following argument without prejudice to renewal after sentence. So ordered. <i>MACMAHON, J.</i>
11-24-70.	Frank J. Del Rosso, Jr.- Filed writ of habeas corpus ad prosequendum. Writ iss. and ret. 12-8-70.
11-25-70	SAMUEL MANARITE - Filed CJA Voucher for compensation and expenses of appointed counsel, & CJA Form # 5. (orig. mailed Wash. D.C.) Memo. Re; CJA # 5. (see file) <i>MACMAHON, J.</i>
12-2-70.	Filed Govt's Supplemental Bill of Particulars.
12-2-70.	Vinny Cacace- Filed suggested questions for the examination of the trial jury. <i>(12/2/70)</i>
12-1-70	DOMINICK CONSTANTINO- Filed Judgment (atty. present) It is Adjudged that the deft. is sentenced to a period of ONE (1) YEAR and ONE (1) DAY on count 1. Execution of prison sentence is suspended. Deft placed on probation for a period of ONE (1) YEAR, subject to the standing probation order of this Court. Deft. is FINED \$5,000. on count 1. FINE is to be paid during period of probation or the deft. is to be committed until the fine is paid or he is otherwise discharged according to law. <i>(12/1/70) MACMAHON, J.</i>
12-1-70	RICHARD J. PORTELA- Filed Judgment (atty present) It is Adjudged that the deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of THREE (3) YEARS on each of counts 1, 7, 10, 12, & 13 to run concurrently with each other AND Deft. is FINED \$10,000 on count 1; \$5,000. on each of counts 7, 10, 12 & 13. TOTAL FINES of \$30,000. to be paid or the deft. is to stand committed until the fines are paid or he is otherwise discharged according to law. Deft. continued on present bail until 4 p.m. on Dec. 1, 1970 at which time he is to post bail pending appeal fixed at \$10,000. Special condition of bail pending appeal is that the appeal is to be perfected within 70 days or the minimum time allowed by the Court of Appeals and the deft. is to report to the strike force every Monday before noon by telephone. <i>MACMAHON, J.</i>
	Commitment and copies issued.

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Cr. 747

[Page 10]

DATE	PROCEEDINGS
12-1-70	FERRIS JACOB ALEXANDER- Filed Judgment (atty present) It Is Adjudged that the deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of EIGHTEEN (18) MONTHS on each of counts 1, 7 & 10, to run concurrently with each other. -AND- Deft. FINED \$10,000. on count 1; \$5,000. on each of counts 7 and 10. TOTAL FINES of \$20,000. to be paid or deft. to stand committed until the fines are paid or he is otherwise discharged according to law. Deft. continued of present bail until he posts bail pending appeal fixed in the amount of \$5,000. Special condition of bail is that the deft. is to report to his attorney by telephone. (special condition SEE PORTELA) MacMAHON, J. Commitment and copies issued.
12-1-70	RICHARD J. PORTELLA- Filed notice of appeal from judgment. (Notice mailed by R.T.) \$5.00 pd.
12-1-70	FERRIS ALEXANDER - Filed notice of appeal from judgment. (Notice mailed by R.T.) \$5.00 pd.
12-2-70	DOMINIC CONSTANTINO- Filed notice of appeal from judgment. \$5.00 pd.
12-3-70	<del>S.F. MANARITE</del> Filed Commitment & entered return, Deft. Delivered to the Detention Center.
12-3-70	PAUL WOLF - Filed Dept. of Justice receipt #777619, dtd. 11-24-70, amt. \$1,000. Bail forfeiture.
12-7-70	RICHARD J. PORTELLA- Filed appearance bond Amt. \$10,000. dtd. 12-1-70. Stuyvesant Ins. Co. (commr. Bishopp)
12-7-70	LUIS MARTI- Filed notice of Appeal from judgment. (notice mailed by L.S.) \$5.00 pd.
12-8-70	PHIL FRIMET - Filed judgment (atty present) It Is Adjudged that the Imposition of sentence is suspended on count 1. Deft. placed on probation for a period of ONE (1) YEAR, subject to the standing probation order of this Court. Counts 2, 4, 5, 7, 10 & 12 are dismissed on motion of deft's. counsel with consent of Government. MacMAHON, J. FRANK J. DEL ROSSO, Jr. - Filed Judgment (atty present) It Is Adjudged that the deft. is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment for a period of SIX (6) MONTHS on count 1. The Court recommends that the Atty. Gen. pursuant to Sect. 600 of Title 18, U.S.C., arrange to have this sentence served concurrently with the sentence deft. is presently serving at Ossining Correctional Facility, Ossining, New York, in so far as the time that can be served concurrently can be served. Counts 6 & 8 are dismissed on motion of deft's. counsel with consent of the Government. MacMAHON, J. Commitment and copies issued.
	(Cont'd. on page 11)



DATE	PROCEEDINGS
12-7-70	<p>LUIS MARTI - Filed Judgment (atty present) <u>12/15/70</u>, It Is Adjudged that the deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of TWO (2) YEARS on each of counts 1 &amp; 13, to run concurrently with each other - AND -</p> <p>Deft is FINED \$10,000. on count 1; \$5,000 on count 13 TOTAL FINE \$15,000. is to be paid or the deft. is to stand committed until the fine is paid or he is otherwise discharged according to law.</p> <p>Deft. is released to the custody of his attorney until 4 p.m. on 12-8-70 at which time deft. is to have posted bail fixed at \$10,000. pending appeal. Special condition of bail pending appeal is that the appeal is to be perfected within 70 days or the minimum time allowed by the Rules of the Court of Appeals whichever is shorter and that the deft. report to his atty. on Mondays.</p> <p style="text-align: right;">MacMAHON, J.</p> <p>Commitment and copies issued.</p>
12-17-70	Filed Transcript of record of proceedings, dated <del>11-21-70</del> 11-23-70
12-17-70	Filed Transcript of record of proceedings, dated 10-9-70
12-17-70	Filed Transcript of record of proceedings, dated 11-13-70
12-17-70	Filed Transcript of record of proceedings, dated 10-23-70
12-17-70	Filed Transcript of record of proceedings, dated 10-28-70
12-17-70	Filed Transcript of record of proceedings, dated 11-6, 7-70
12-17-70	Filed Transcript of record of proceedings, dated 11-5-70
12-17-70	Filed Transcript of record of proceedings, dated 11-8-70
12-17-70	Filed Transcript of record of proceedings, dated 11-20-70
12-17-70	Filed Transcript of record of proceedings, dated 11-15-16-70
12-17-70	Filed Transcript of record of proceedings, dated 11-26-70
12-17-70	Filed Transcript of record of proceedings, dated 11-14-70
12-24-70	<p>LUIS MARTI - Filed appearance bond, dtd. 12-7-70, amt. \$10,000.</p> <p>The Stuyvesant Ins. Co., by U.S. Commr.</p>
1-8-71	<p>SAMUEL MANARITE- Filed letter addressed to MacMAHON, J. <del>hkd.</del> post marked 12-28-70 &amp; memo endorsed:</p> <p style="text-align: center;">Contents noted.</p> <p style="text-align: right;">MacMAHON, J.</p>
1-11-71	<p>FRANK DEL ROSSO, Jr. - Filed CJA Voucher for compensation and expenses of appointed counsel. (orig. mailed Wash. D.C.) MacMAHON, J.</p>
1-15-71	<p>Samuel E. Manarite- Filed Order by Judge Bensal dated 1-15-71 *****</p> <p>Ordered that the Clerk of this Court pay out of the registry of this Court to Jeanne Manarite the person who deposited the said to be continued page 12</p>

DATE

PROCEEDINGS

i from previous page.

sum of money, the sum \$5,000. (see file) ( Paid out check #3600 1/19/70 )

6-30-70. Samuel F. Manarite- Docketed OPINION # 36917 by Judge MacMahon, dated 6-30-70.  
(opinion denied) see opinion in file)

1-18-71. S.F. Manarite- The record on appeal in the above entitled proceeding has been  
certified and transmitted to the U.S.C.A. for the Second Circuit  
this 18 th day of January, 1971.

2-2-71 FRANK J. DEL ROSSO - Filed M/R on W/H/C, writ satisfied 12-8-70.

1-12-71 SALVATORE PUNTA SECCA - Filed CJA voucher for compendation and expenses  
of appointed counsel. (orig. mailed Wash.) MacMAHON, J.

1-12-71 SALVATORE PUNTA SECCA - Filed CJA Form # 8, (orig. mailed Wash.) LUMBARD, J.

1-12-71 SALVATORE PUNTA SECCA - Filed memo. Re: payment of CJA voucher. (see memo  
in file) (copy mailed Wash.) MacMAHON, J.

3-10-71. Ferris Jacob Alexander- Filed notice of motion in application for an  
order staying the payment of \$20,000. fine pending deft's  
appeal.

3-10-71. Filed memo. endorsed on motion filed 3-10-71 for stayed of fine.  
"Motion granted. See order dated march 10-71. MacMahon, J.  
(see memo. on file) (mailed notice.)

3-10-71. Filed Order on the above matter by Judge MacMahon, dated 3-10-71"  
"Ordered that t' a fine for \$20,000. imposed upon defendant  
F.J. Alexander as a part of the judgment of conviction and  
sentence rendered on 12-1-70, is hereby stayed pending the  
disposition of the appea' (see order) (mailed notice.)

R.J. Portella:

4-27-71 Filed stip. concerning exhibits for appeal.

4-27-71 Filed notice that the supplemental record on appeal including exhibits in the  
above entitled proceeding has been certified and transmitted to the U.S.C.A..

7-1-71 DOMINIC CONSTANTION- Filed Bond Pending Appeal in the sum of \$2,500.00  
Stuyvesant Insurance, Co., Surety dated 6-30-71.

8-16-71 SAMUEL F. MANARITE )  
LOUIS MARTI )  
RICHARD J. PORTELA )  
DOMINIC CONSTANTINO )  
FERRIS JACOB ALEXANDER ) - Docketed Opinion and Judgment of the U.S.C.A., filed  
8/12/71, affirming the judgments of the District Court. "Judgment entered -  
8/12/71 - John Livingston, Clerk" - SEE letter from A. Daniel Fusaro, Clerk,  
U.S.C.A., dated 8/11/71 to Mr. Livingston, Clerk " The mandate (certified  
copy of judgment and opinion of this court) enclosed, should be considered  
as applying to SAMUEL F. MANARITE, RICHARD J. PORTELA and DOMINIC CONSTANTINO  
only. (SEE Opinion, judgment and latter).



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DATE	PROCEEDINGS
8-27-71	FERRIS JACOB ALEXANDER- Filed application for bail.
8-27-71	FERRIS JACOB ALEXANDER-Filed memo-endorsement on application for bail., "The within motion by deft for an order continuing him on bail, pending an application to the U.S. Supreme Court for a writ of certiorari and disposition of that application, is granted on condition that deft file his application within the minimum time provided by the applicable rules." (n/m) MacMAHON, J.
9-27-71	LUIS MARTI ) FERRIS JACOB ALEXANDER ) - Filed letter, dated 9/2/71, from A. Daniel Fusaro, Clerk, U.S.C.A., to Mr. Livingston, Clerk, that the mandate (certified copy of judgment and opinion) of the U.S.C.A., issued on 8/11/71, should now be construed as applying to appellants Luis Marti and Ferris Jacob Alexander.
11-24-71	Filed Govt's affdvt in opposition to deft Alexander's motion to reduce sentence. MacMAHON, J.
11-22-71	FERRIS J. ALEXANDER-Filed notice of motion for reduction of sentence.
11-22-71	Ferris J. Alexander-Filed brief in support of petition for resentencing.
11-30-71	FERRIS J. ALEXANDER- filed memo-endorsed on motion dtd 11-22-71. " Substantially all the material facts now urged in support of the within motion were before the Court and carefully considered at the time of sentence. Accordingly, the within motion is in all respects denied." (mailed notice) Judge MacMahon
12-2-71	SAMUEL MANARITE - Docketed Judgment of the Supreme Court of the U.S., filed 11/29/71, denying petition for a Writ of Certiorari.
12-2-71	LUIS MARTI - Docketed Judgment of the Supreme Court of the U.S., filed 11/29/71, denying petition for a Writ of Certiorari.
12-2-71	RICHARD J. PORTELA - Docketed Judgment of the Supreme Court of the U.S., filed 11/29/71, denying petition for a Writ of Certiorari.
12-2-71	FERRIS JACOB ALEXANDER - Docketed Judgment of the Supreme Court of the U.S., filed 11/29/71, denying petition for a Writ of Certiorari.
12-6-71	E.ALEXANDER- filed notice of motion to dismiss the indictment, and affdvt. Judge MacMAHON, J.
XXXXXXXXXXXXXXXXXXXX	
12-7-71	F.J. ALEXANDER-Filed notice of appeal to U.S.C.A. from order of Mac Mahon, denying deft's motion for reduction of sentence.
12-10-71	Filed record of proceedings dated March 12, 1970.
12-10-71	Filed Govt's affdvt in opposition to deft's Alexander's motion to dismiss indictment. Judge Crooke

DATE	PROCEEDINGS
12-17-71	LUIS MARTI- Deft fails to appear for surrender. bench warrant ordered. Bail for feited. Judge Bryan
12-29-71	SAMUEL MANARITE: Filed letter dated Dec. 9, 1971 and memo-endorsed: Motion for reduction of sentence is denied. MAC MAHON, J.
12-17-71	R. PORTELLA-Defendant's surrender date extended to 1-4-72 in Rm. 318 at 10:00 a.m. MAC MAHON, J.
12-20-71	E.J. ALEXANDER: Filed letter dated 12-14-71 and endorsement. Deft's time to surrender adj'd to 1-4-72 at 11 a.m. in Rm. 318 MAC MAHON, J.
1-4-72	<del>ALEXANDER</del> Deft. surrenders directly to U.S. Marshal Minneapolis, Minn. McLean.J.
1-4-72	Portella- Deft. surrenders to U.S. Marshal for service of sentence.



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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA :

- v - :

SAMUEL F. MANARITE, and :  
RICHARD J. PORTELA :

: INDICTMENT

: 69 Cr. 892

Defendants. :  
-----X

The Grand Jury charges:

From on or about the 1st day of April, 1969, and continuously thereafter up to and including the 1st day of October, 1969, in the Southern District of New York, the defendants, SAMUEL F. MANARITE and RICHARD J. PORTELA, unlawfully, willfully and knowingly participated in the use of extortionate means, within the meaning of Title 18, United States Code, Section 891 (7), to collect and attempt to collect an extension of credit from the debtor, PHIL FRIMET, in that the defendants, SAMUEL F. MANARITE and RICHARD J. PORTELA, unlawfully, willfully and knowingly used express and implicit threats of violence and other criminal means to cause harm to the person, reputation and property of the debtor, PHIL FRIMET, in order to collect and attempt to collect an extension of credit from the said PHIL FRIMET.

(Title 18, United States Code, Sections 894 and 2)

\_\_\_\_\_  
Foreman

\_\_\_\_\_  
Robert M. Morgenthau  
United States Attorney

1 [nnmeg 69]

Frimet - cross

2 if we can stipulate orally that if he were called, he would  
3 so testify.

4 THE COURT: I don't see any particular injury to  
5 you in having a piece of paper go in as a stipulation; if  
6 they are willing to make the stipulation orally, it would  
7 be just as good.

8 MR. SCOTT: I have no objection if Mr. La Rossa  
9 will stipulate orally that if he were called, he would  
10 so stipulate.

11 THE COURT: You are willing to do that, aren't you?

12 MR. LA ROSSA: Yes.

13 THE COURT: All right, why don't you start out  
14 by stating the stipulation or do it whenever you are ready.

15 MR. SCOTT: All right, we will proceed now.

16 (In open court.)

17 MR. BRODSKY: May I proceed, your Honor?

18 THE COURT: Please.

19 MR. BRODSKY: Thank you.

20 CROSS-EXAMINATION BY MR. BRODSKY:

21 Q Mr. Frimet, I think you testified yesterday that  
22 you had pleaded guilty to one crime, is that correct, sir?

23 A Yes, sir.

24 Q And that was in the state court, is that correct?

25 A Yes.



[mmeg 70]

Frimet- cross

Q What?

A Yes.

Q And do you know what that crime was?

A Pornography.

Q What?

A Pornography.

Q By pornography, you mean?

A Possession of pornography.

Q Possession of obscene material?

A Right.

Q Now, in that case you were arrested on August 6th, 1968, is that correct?

A Yes.

Q When did you plead guilty to that charge?

A I think it was about six or seven months later. I don't remember the exact date.

Q Around six or seven months later?

A I think so.

Q That would make it in the early part of 1969?

A 1969.

Q Is that correct?

A Yes, sir.

Q Have you been sentenced on that charge as yet?

A No, I am waiting for sentence.

[mmeg 71]

Frimet - cross

Q I take it, then, that you are waiting more than a year now for the sentence, is that correct, sir?

A Yes.

Q Now, has anybody from either the Department of Justice or the FBI interceded on your behalf to have that sentence postponed in the state court?

A To my knowledge, no.

Q Have you spoken to anybody in the Department of Justice or the FBI with reference to that sentence?

A Yes.

Q You told them that you were awaiting sentence, is that correct in the state court?

A That's right.

Q Now, when was the last time that you were supposed to be sentenced in the state court? Do you recall?

A In the beginning of May.

Q The beginning of this month?

A Right.

Q What date, do you remember?

A No, my lawyer had the date, and he is --

Q What --

A My attorney had the date and he said he was going to go down to answer it for me and he would call me if I have to appear.



[mmeg 72]

Frimet- cross

Q You did not appear?

A No.

Q In court?

A No.

Q And when you spoke with your attorney, did he give you the adjourned date?

A He said it was adjourned to November.

Q November?

A That's right.

Q 1970?

A Yes.

Q The sentence?

A Yes.

Q Now, you told us that you were arrested four times thereafter, is that correct?

A Yes, sir.

Q Now, were you arrested on January 27th, 1969, sir?

A Yes.

Q For what crime?

A Attempted larceny.

Q What?

A Attempted larceny.

Q Attempted grand larceny, is that correct?

A Grand larceny.

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[mmeg 72a]

Frimet -cross

Q That is also in the state court, right?

A Yes.

Q Have you been indicted for that crime, sir?

A Not yet.

THE COURT: May I speak to counsel at the bench, please.

... as a witness, and I'm covering ...  
... you are entitled to ...  
...

MR. FRIMET: I would like to ...  
... on the ...  
... FBI with ...

... ..

MR. FRIMET: ... ..  
... ..

THE COURT: ... ..  
... ..  
... ..  
... ..

MR. FRIMET: I don't want to ... ..  
... ..  
... ..

... ..  
... ..



[mcp 76]

Prinet-cross

A No, I didn't.

Q Did they question you about that crime?

A No.

Q Now, thereafter when were you arrested again; do you know?

A In May.

Q Do you know the date?

A The 22nd of May.

Q Whom were you arrested by?

A The Secret Service.

Q What were you charged with; do you know?

A Possession of counterfeit stamps.

Q What?

A Possession of counterfeit stamps.

Q Were you charged with violation of Title 18, United States Code, Sections 471, 472, 473, 474, 501 and 504; do you know?

A I don't know.

Q Were you charged with the manufacture of counterfeit stamps?

A I don't know.

MR. BRODSKY: May I with the Court's permission read Section 471 of the United States Code?

THE COURT: No. If Mr. Scott knows what the

[mcp 77]

Prinet-cross

charge is and wishes to stipulate to it, I suggest that perhaps that can be done, but I will not permit the section of the law to be read.

MR. SCOTT: If your Honor will give me just one moment, I think I can --

(Pause.)

MR. SCOTT: Your Honor, the extent of my knowledge on this is that the initial charge against Mr. Prinet was the manufacture, possession and passing of counterfeit stamps.

THE COURT: I think that is sufficient for Mr. Brodsky's purposes.

Q Do you know what the punishment for that crime is, sir?

A A jail sentence.

Q Do you know how much?

A No.

Q Do you know that the sentence is not more than \$5000 or imprisonment not more than 15 years or both?

MR. SCOTT: Objection to the form, your Honor.

THE COURT: Overruled.

Q Did you know that, sir?

A I know it now.

Q You didn't know it before that?



[mcp 78]

Frimet-cross

A No.

Q Did you talk to anybody from the Department of Justice or the FBI with reference to that crime?

A Yes, I spoke to them about it, yes.

Q When did you speak to them about it?

A A few months ago.

Q When would you say a few months would be?

A About four months ago.

Q Were you again arrested, sir?

A Yes, in July.

Q Of what year?

A Of 1969.

Q For what crime?

A Conspiracy.

Q Federal case?

A Yes.

Q For interstate transportation of obscene material?

A Yes.

Q Have you spoken to anybody from the Department of Justice or the FBI with respect to that crime?

A Yes.

Q Now, Mr. Frimet, you expect to receive consideration, do you not, for your testimony in this case on the other charges?

[mcp 79]

Prinet-cross

A No, sir.

Q What?

A I don't expect it.

Q You don't expect it?

A They told me not to expect it.

Q Did you ever discuss it with members of the FBI or the Department of Justice?

A Yes, I did, and they told me not to expect anything.

Q Do you expect anything?

A No, I don't.

MR. SCOTT: Objection, your Honor. He has testified that he doesn't expect anything at all.

Q Did they say that you were not to expect anything or did they say that they made no promises to you?

A Not to expect anything.

Q Did they say that they would bring to the attention of the Court, the sentencing Court, your testimony in this case, your cooperation with them?

A No, they did not promise me. They told me not to expect anything at all.

Q They told you that they would not bring to the attention of the Court, right, that you cooperated with the government; is that correct?



[mcp 80]

A They didn't mention anything about that.

Q Did you ask?

A No, I didn't.

Q You weren't interested?

A Not that I wasn't interested. Maybe I didn't know  
the right questions to ask.

Q In other words, you didn't know enough to make a  
deal with the government?

A They wouldn't give —

Q Is that what you are trying to tell us?

A They wouldn't give me a deal.

Q You said you didn't know the right questions to  
ask?

A Correct.

Q And you asked no questions at all?

A I didn't ask him anything.

Q Now, when you borrowed the \$1500 from Mr. Manarite,  
as you have told us, in May of 1969, that was after you  
had been arrested for the manufacture, possession and  
passing of counterfeit stamps; is that correct?

A I didn't pass any counterfeit stamps.

Q For the manufacture and possession?

A But I didn't pass anything.

Q I have changed the question.

[5 mmeg 88]

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question, and I was about to reproach you for it and I reproached you here at the bench because you, in getting him to make that admission, you got him to make an admission that you should not have elicited, and I think it was unfair to this man and it was contrary to my instructions.

MR. BRODSKY: I thought you told me I could read the charge to him.

THE COURT: You know your ingenuousness is overwhelming.

Didn't I tell you you couldn't establish the crime and didn't Mr. La Rossa explain to you what I meant by that? You had a perfectly good explanation of what I meant when you were here.

MR. LA ROSSA: Sir, may we determine --

MR. BRODSKY: Let's let it go at that.

MR. LA ROSSA: I'm sorry. May I go ahead?

THE COURT: Go ahead.

MR. LA ROSSA: May we determine from Mr. Frimet's counsel whether or not he has an agreement with the government that this matter be dropped? If that is the case, if the government dropped the counterfeiting case and he has some sort of agreement, I submit under Napue against the United States the witness' answer with respect to any consideration being known, that the government is under a



[6 mmeg 89]

Frimet- cross

burden right now to tell us whether there is any consideration promised to Mr. Frimet, to Mr. Frimet's lawyer.

THE COURT: I ask Mr. Roberts to make a full statement now of any consideration or any promises or agreements which may be made with this man.

MR. ROBERTS: We have no agreements.

THE COURT: Mr. Scott, do you know of any agreements?

MR. SCOTT: Are we talking now with relation to counterfeiting?

THE COURT: With relation to any charge.

MR. SCOTT: With relation to the counterfeiting charge I am totally unaware of the case so I am unaware of any agreement.

MR. ROBERTS: There is no indictment handed down; this is a year and-a-half.

MR. LA ROSSA: Has anyone, to your knowledge, having anything to do with the government, either the FBI or the United States Attorney's office, agreed to make known to any sentencing judge his cooperation with the government? I make that question as specific as I can.

MR. ROBERTS: I will explain that to you, and this is the only agreement that I have.

MR. LA ROSSA: I want the government to make the

[7 mmeg 90]

Frimet- cross

representation. You are not a party to this.

THE COURT: While Mr. Scott is conferring with Mr. McGuire, may I respectfully suggest that all of this is of very little significance because I will be the sentencing judge. The case is assigned to me and I have to hear the testimony, so nobody has to call it to my attention.

MR. LA ROSSA: In Napue against the United States, if the government promised to make this cooperation known to the sentence judge, whoever that may be, they are under a duty, if the witness denies it, to bring it to the attention of the jury.

THE COURT: Yes, I agree.

MR. BRODSKY: Your Honor says your Honor will be the sentencing judge. Not in the counterfeiting case. Your Honor will be the sentencing judge only in this case but not as affecting Frimet.

THE COURT: You are right. He is not a defendant in this case. You are quite right.

MR. SCOTT: In response to your question to me, I informed the District Attorney who was handling the case that if Mr. Frimet testified in this case that I would indicate in a letter to the sentencing judge in that case that he had testified. That was the full extent of what I said I would do. I just said I would indicate that he had



[8 mmeg 91]

Frimet- cross

testified.

MR. McGUIRE: And you said that to --

MR. BRODSKY: Put it on the record in front of the jury, Judge. He just denied it.

MR. McGUIRE: You don't know if the witness knows that.

MR. SCOTT: He wasn't present in my office.

MR. LA ROSSA: You say you have not told him this?

MR. ROBERTS: No.

MR. LA ROSSA: Are you saying you never told him this?

MR. ROBERTS: No.

MR. BRODSKY: I think that stipulation should go in.

MR. ROBERTS: This only happened.

MR. McGUIRE: It does not affect the witness.

THE COURT: Have you any objection to making the statement in the presence of the jury?

MR. SCOTT: Out of the presence of the jury.

THE COURT: In the presence of the jury?

MR. SCOTT: Yes, I do, but Mr. Frimet was not aware of this. I made this call to the District Attorney's office in response to a phone call from Mr. Roberts. Mr. Frimet was not in my office at that time and I have not

1 [mcp 122]

Roberts-direct

2 but Mr. Scott had corrected me now. However, it was my  
3 impression and Mr. Brodsky's impression that a letter had  
4 been written from the United States Attorney to the District  
5 Attorney and apparently I misunderstood Mr. Scott.

6 MR. SCOTT: There has been no letter written.  
7 I did have a conversation with M. Aronwald in which I  
8 indicated that at that time that Mr. Primet testified on  
9 behalf of the government in this matter I would write a  
10 letter indicating that he had testified for the government  
11 and, you know, write that to the sentencing judge in this  
12 other case. There has been no letter written.

13 THE COURT: You said you would write a letter.

14 MR. LA ROSSA: I ask that that representation  
15 that Mr. Scott gave to Mr. Aronwald be brought to the attention  
16 of the jury.

17 THE COURT: I will give that consideration. If I  
18 do it I will do it at a later point in the trial.

19 MR. SCOTT: I would like to point out again with  
20 reference to that that that representation was not made to  
21 Mr. Primet. He has no knowledge of it, to my knowledge,  
22 and therefore if they are trying to get at this motive for  
23 his testimony I cannot see how it is relevant. Therefore,  
24 I don't see why the jury should be informed of this.

25 THE COURT: Very well, I will take that into



[mcp 123]

Roberts-direct

consideration.

MR. LA ROSSA: I have no further questions.

THE COURT: Thank you, sir.

(Witness excused.)

THE COURT: Can we go on with the jury now?

MR. LA ROSSA: That's right.

THE COURT: Do you want Mr. Frimet back on the stand?

MR. LA ROSSA: And in relation to this voir dire.

THE COURT: In relation to other matters?

MR. LA ROSSA: That's correct.

THE COURT: Bring in the jury.

I notice that the witness we talked about is back in the courtroom. Am I correct?

MR. LA ROSSA: I will not use her.

(Jury present.)

PHIL FRIMET, resumed.

CROSS EXAMINATION CONTINUED BY MR. LA ROSSA:

May I proceed, your Honor?

THE COURT: Yes, please.

Q Mr. Frimet, I show you what has been marked Government's Exhibits 3501 and 3502 for identification and I ask you to look at these and tell me whether you have ever seen them before.

[mch 1]

THE COURT: Will you make your motions?

MR. LA ROSSA: On behalf of the defendant Portela, I respectfully move to dismiss on the ground that the government has not proven a prima facie case.

THE COURT: Denied.

MR. BRODSKY: On behalf of the defendant Manarite I move for a directed verdict and a judgment of acquittal on the ground that the government has failed its case.

THE COURT: Denied. I assume, Mr. La Rossa, that you are making that motion also?

MR. LA ROSSA: Yes.

THE COURT: Denied.

Do you intend to call witnesses?

MR. LA ROSSA: Yes.

THE COURT: How long do you think it will take?

MR. LA ROSSA: I don't know, your Honor. It might be a half an hour.

I have a problem before we can get to that point. First of all, I'm going to ask the government for its print sheet with respect to Portela and I'm going to make a Palumbo motion.

MR. BRODSKY: Your Honor, with respect to the statement that the government is going to make to the jury about the writing of the letter on behalf of Frimet --



[mch 2]

MR. SCOTT: I was not aware of any statement that I was supposed to make to the jury.

THE COURT: He never communicated such information to anybody. It was an unreserved communication which he was going to make at a future time after he testified and since one of the issues before this jury is the credibility of Frimet and you are assailing his credibility on the ground that he has some hope for leniency and he has made some arrangement, since this is a plan of Mr. Scott not communicated to Mr. Frimet and not even communicated to his lawyer, I don't see why this jury should be concerned with it. It doesn't concern this jury at all.

MR. BRODSKY: All right. I respectfully except to your Honor's ruling. If Mr. La Rossa is only going to take an hour or less I will expect you gentlemen to sum up and I will submit the case to the jury tomorrow morning, all of which makes it important that you give me your requests to charge tomorrow morning.

Don't give me things like a definition of reasonable doubt or boilerplate of that kind out of the files of other cases because I'm always getting that kind of thing and I feel very offended.

MR. BRODSKY: I have one I think you ought to grant.

THE COURT: One request prepared for this case

[mch]

[393]

1 of wilfulness as I have defined it for you, and there  
2 are other forms of provocation like stepping on the toe  
3 heavily and calling forth an immediate reaction which  
4 gave no room for purposeful or deliberate replies in the  
5 sense that I have explained it. So, depending upon how  
6 you define provocation and the circumstances under which  
7 you find that it occurred, the answer could be yes and  
8 the answer could be no. I hope I have helped you. If I  
9 have, you may retire. If there are any further questions,  
10 don't hesitate to ask them.  
11

12 (Jury out.)

13 THE COURT: Is there anything counsel want to say?

14 MR. BRODSKY: We respectfully except to your  
15 Honor's reply to the jury's question.

16 MR. LA ROSSA: I join in with respect to the  
17 example that you gave.

18 THE COURT: All right.

19 (Recess)

b14 20 (Jury present at 4:45 P.M. The jury roll was  
21 called.)

22 THE CLERK: Mr. Foreman, has the jury agreed upon  
23 a verdict?

24 THE FOREMAN: Yes, they have.

25 THE CLERK: How do you find as to the defendant  
Samuel Manarite?



1 [mch]

[394]

2 THE FOREMAN: Guilty.

3 THE CLERK: How do you find as to the defendant  
4 Richard Portela?

5 THE FOREMAN: Not guilty.

6 THE CLERK: Members of the jury, listen to your  
7 verdict as it stands recorded: you say you find the  
8 defendant Samuel Manarite guilty and the defendant  
9 Richard Portela not guilty and so say you all?

10 THE COURT: Poll the jury.

11 THE CLERK: Members of the jury, you say you find  
12 the defendant Samuel Manarite guilty and the defendant  
13 Richard Portela not guilty. Is that your verdict?

14 (All jurors answered in the affirmative.)

15 THE CLERK: So say you all.

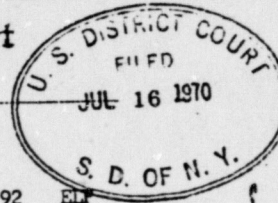
16 THE COURT: Thank you very much, ladies and gentle-  
17 men, for the conscientious attention you have given to  
18 this case. You are excused until Monday morning. I  
19 understand you have to report to the Jury Commissioner  
20 in room 109 at 9:30 on Monday morning.

21 (Jury excused.)

22 THE COURT: Are there any motions, gentlemen?

23 MR. BRODSKY: If your Honor please, the defendant  
24 Samuel Manarite respectfully moves to set aside the  
25 verdict on the ground that it is contrary to the law

**JUDGMENT AND COMMITMENT**  
**United States District Court**  
 FOR THE  
 SOUTHERN DISTRICT OF NEW YORK



July 20, 1970

United States of America

v.

No. 69 Cr 892

SAMUEL F. MANARITE

On this 16th day of July, 1970 ~~XXXXXX~~ came the attorney for the government and the defendant appeared in person and by counsel

It is ADJUDGED that the defendant upon his plea of not guilty, and a verdict of guilty by a jury has been convicted of the offense of unlawfully, wilfully and knowingly using express and implicit threats of violence and other criminal means to cause harm to the person, reputation and property of a debtor, in order to collect and attempt to collect an extension of credit from the said debtor. (Title 18, United States Code, Sections 894 and 2)

as charged<sup>3</sup> and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is ADJUDGED that the defendant is guilty as charged and convicted.

It is ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **FIFTEEN (15) YEARS** and **FINED \$5,000.00**. The defendant is to stand committed until the fine is paid or he is otherwise discharged according to law.

~~XXXXXXXXXXXXXXXXXXXX~~

It is ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

~~XXXXXXXXXXXXXXXXXXXX~~  
 The Court recommends commitment to

*Samuel F. Manarite*  
 United States District Judge.

*John Livingston*  
 Clerk.

Insert "by (name of counsel, counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. Insert "in count(s) number" if required. Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. Enter any other with respect to suspension and probation. For use of Court to recommend a particular institution.



CRIMINAL COURT OF THE CITY OF NEW YORK

COUNTY OF NEW YORK

PART 1B

-----X

THE PEOPLE OF THE STATE OF NEW YORK : Docket Number:  
B-16597/68

-against-

Charge: 235.05

PHIL FRIMET,

Defendant. : SENTENCE

-----X

100 Centre Street  
New York, New York  
November 16, 1970

B E F O R E : HONORABLE DANIEL WEISS

A P P E A R A N C E S :

MICHAEL HAYNES, ESQ.,  
ASSISTANT DISTRICT ATTORNEY,

For the People.

VICTOR A. ROBERTS, ESQ.  
401 Broadway  
New York, New York,

For the Defendant.

IRA DICKSTEIN  
COURT REPORTER

COURT OFFICER: Calendar Number 3, Docket B-16597/68, Phil Frimet.

This case is on for investigation and sentence.

MR. HAYNES: Your Honor, Mr. Roberts has presented me with a letter from the United States Department of Justice signed by Stephen H. Cott, Special Attorney.

The People would have no objection to defense counsel presenting this to the Court as to involvement by this defendant in the federal authority's investigation, if your Honor would care to read that.

THE COURT: What happened with the other case pending before the grand jury? Is that still pending?

MR. ROBERTS: Which case are you talking about, Judge?

THE COURT: Evidently in this County. He was arrested January 1969.

MR. ROBERTS: Yes, that is still pending.

THE COURT: And May of 1969?



MR. ROBERTS: Yes, Judge.

THE COURT: That is pending too in the District Court. Step up, counsel, with the district attorney.

(Discussion off the record.)

THE COURT: Is this defendant ready for sentence?

MR. ROBERTS: He is.

THE COURT: Is there any legal cause why sentence should not be imposed by the Court according to law?

MR. ROBERTS: No, Judge.

THE COURT: I will hear you on behalf of the defendant on the question of sentence.

MR. ROBERTS: He has lived with his wife and his family and he was always a hard working individual all his life.

If your Honor pleases, he got into a little trouble with this pornography business.

He has a son in the armed forces.

He is back in business and working hard and trying to get back on his feet and behaving himself.

THE COURT: For the record, the Court has read the probation report, which is rather comprehensive, and also the Court has read a letter which is going to be attached to the papers in this case sent to this Court by the United States Department of Justice, which the Court has also read and digested and carefully considered.

In view of all the circumstances in this case, the sentence of the Court is that the defendant pay a fine in the sum of \$100 or in default thereof ten days in prison.

Do you need time to pay?

MR. ROBERTS: Yes. May we have two weeks?

THE COURT: November 30th to pay. Bail continued.

Certified to be a true  
and accurate transcript.

Ira Dickstein  
Ira Dickstein,  
Court Reporter.



[pgsr]

[1]

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v s -

PHIL FRIMET,

Defendant.

69 Cr. 747

B e f o r e :

HON. LLOYD F. MAC MAHON,

District Judge.

New York, N. Y.  
8 December 1970 - 2:15 p.m.

A p p e a r a n c e s :

WHITNEY NORTH SEYMOUR, JR., ESQ.,  
United States Attorney for the  
Southern District of New York;  
By: JOEL FRIEDMAN, ESQ.,  
Assistant United States Attorney.

VICTOR A. ROBERTS, ESQ.,  
Attorney for Defendant.

MR. FRIEDMAN: The Government is ready, your Honor.

MR. ROBERTS: Ready for the defendant, your Honor.

THE COURT: I will hear the Government.

MR. FRIEDMAN: Thank you, your Honor.

Your Honor, before this witness testified in any manner it was explained to him that the Government could make no promises to him, and that all we could do was that if he cooperated by telling the truth, present the extent to which he cooperated to the Court at the time of the sentencing. Given that fact, given the fact that there were absolutely no guarantees, Mr. Frimet has gone on and testified in two major Government cases. The first case was United States vs. Manarite and Portello. It was an extortion case in which Mr. Frimet was the principal witness.

In that case Mr. Frimet's life was threatened by Mr. Manarite in many instances. Mr. Frimet took the stand and testified for approximately a day and a half. Mr. Portello was acquitted but Mr. Manarite, the main actor in the case, was convicted and sentenced to 15 years in prison. He was remanded by the Honorable Judge Palmieri.

Your Honor, subsequent to this, Mr. Frimet was approached in the office of his attorney by Mrs. Manarite



1 and at that time Mrs. Manarite stated that she wanted  
2 Mr. Frimet to sign an affidavit that a recording device  
3 put on his person was not put there with his authority,  
4 and she threatened him that if he failed to do this,  
5 certain things would be done against him, and she said  
6 that her sons would take care of him.  
7

8 Additionally, just prior to testifying in this  
9 trial, your Honor, Mr. Frimet was called by an anonymous  
10 caller, and it was indicated on the phone that dire  
11 consequences would befall him in the event that he were  
12 to testify at this trial. Yet, Mr. Frimet did take the  
13 witness stand and he did testify.  
14

15 Your Honor, the Government does not make  
16 recommendations for probation; however, the Government does  
17 feel in this case that the Court must consider this  
18 extensive cooperation that the witness has given. The  
19 Government values this cooperation to a very great extent  
20 and feels this witness has risked his life and continues  
21 to risk it for as long a period of time as he remains on  
22 this earth.

23 The FBI has indicated no knowledge of criminal  
24 activity subsequent to the indictment in this matter. We  
25 would ask the Court also to consider that.

Lastly, your Honor, the Government would submit,

2 were this man sent to prison there is a much greater  
3 chance of his being killed than were he to remain outside.

4 Thank you, your Honor.

5 THE COURT: I will hear defense counsel.

6 What is your name, sir?

7 MR. ROBERTS: Victor A. Roberts.

8 If your Honor pleases, I have known this defendant  
9 for a period of about seven years. At the beginning he  
10 was a very unsuccessful businessman. He was working as  
11 a binder in the printing industry. He went into two  
12 businesses and failed in both, and then he got mixed up  
13 with this printing end of pornography.

14 Since that time he has returned to the binding  
15 business. He borrowed money and went back into the  
16 binding business and has a bindery at 75 Spring Street,  
17 and he has been working there very, very hard. He has  
18 about seven or eight people all the time working for him  
19 there. He works, I would say, seven days a week, your  
20 Honor, in this particular place, trying to make a go of it.

21 He has not engaged in any criminal activities  
22 since the time he has been involved in the pornography.  
23 He has behaved himself to the letter of the law. He has  
24 a son in the Armed Forces. He has tried to be a good  
25 family man, a good father, and a good citizen since that



1 [pgsr]

Frimet

[5]

2 time.

3 In view of all of these facts, Judge, I  
4 respectfully ask the Court that he have a probation.

5 THE COURT: Do you have anything to say for  
6 yourself, Mr. Frimet, before the Court pronounces sentence  
7 on you?

8 THE DEFENDANT: Well, I have learned a good  
9 lesson of what I went through and I learned it the hard  
10 way. Now I am trying to rectify myself by working back  
11 in my own industry, without any printing, just binding,  
12 and that's what I am doing now.

13 I am sorry for what I did.

14 THE COURT: The Court is mindful from the  
15 Government's statement and also from observing you on the  
16 witness stand in this case that you did render substantial  
17 cooperation to the Government, and under circumstances  
18 which placed you in serious danger. Your fear was evident  
19 to me on the witness stand. Cooperation of this sort is  
20 a long step towards rehabilitation, good citizenship. You  
21 should be rewarded for the services that you have rendered  
22 to the public.

23 Accordingly, the Court suspends the imposition  
24 of sentence and places you on probation subject to the  
25 conditions of the standing probation order of this Court.

I would add this word, this admonition to you: Your problems seem to stem from the fact that you had gone into debt, further than you were able to handle, and thus you had the pressure on you to get into these illicit businesses, to make excessive and exorbitant illicit profits. You must stop that course of action and try to live within your means. You are a businessman. If you don't, you are going to be back into this kind of situation.

This is not the first time you have been in it. I have suspended sentence, the imposition of sentence, here. Should you violate your probation, then the Court will have no choice but to sentence you to a prison term. I do not want to do that for a good many reasons, so behave yourself.

Good luck.

Probation for one year.

MR. FRIEDMAN: Thank you, your Honor.

MR. ROBERTS: Thank you, your Honor.

THE COURT: Wait a minute. We have open counts.

MR. FRIEDMAN: Your Honor, the Government moves to dismiss against Mr. Frimet all counts to which he did not plead guilty.

THE COURT: Do you join in that motion?



1 [pgsr]

Frimet

[7]

2 MR. ROBERTS: I do.

3 THE COURT: Motion granted.

4 What are the counts, so that the record is  
5 clear?

6 MR. FRIEDMAN: I don't have it with me.

7 THE COURT: Counts 2, 4, 5, 7, 10 and 12 are  
8 dismissed as to the defendant Frimet.

9 MR. FRIEDMAN: Thank you, your Honor.

10 MR. ROBERTS: Thank you.

11 \* \* \*

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

SAMUEL F. MANARITE

Petitioner

vs.

No. 74-19-C3

LOREN E. DACGETT, Warden  
United States Penitentiary  
Leavenworth, Kansas

Respondent

FILED  
MAY 1 - 1974

MEMORANDUM AND ORDER

ARTHUR G. JOHNSON, Clerk  
By Arthur G. Johnson Deputy

This rather perplexing petition for a writ of habeas corpus is before the court pursuant to its order that the file be returned to the undersigned judge upon the filing of the respondent's answer and return and the petitioner's traverse thereto. Prompted perhaps by the allegations in the answer and return, the petitioner has filed an amended petition and, in the traverse, advanced a new theory for release.

The petitioner Samuel F. Manarite is presently confined at the United States Penitentiary, Leavenworth, Kansas. The uncontroverted allegations of the answer and return show that he has twice been convicted and sentenced by the United States District Court for the Southern District of New York. On July 16, 1970 that court imposed a sentence of fifteen years imprisonment following his conviction of violation of 18 USCA §§ 2 and 894 in Case No. 69 Cr 894. On October 28, 1970 the court imposed a term of 18 months imprisonment in Case No. 69 Cr 747 consecutive to the term in 69 Cr 894.

In his initial petition the petitioner neglected to mention the imposition of the second and consecutive sentence, or even that he was involved in any case other than Case No. 69 Cr 894. The imposition of the sentence imposed October 28, 1970 in Case No. 69



Cr 747 came to light with the filing of the respondent's answer and return. Petitioner initially applied to the court alleging that under the terms of the sentence of 69 Cr 894, he was entitled to immediate release. The order of commitment reads as follows:

"IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN (15) YEARS and FINED \$5,000.00. The defendant is to stand committed until his fine is paid or he is otherwise discharged according to law."

He submitted what purports to be a copy of a receipt for payment of the fine.

Having admitted the existence of the consecutive sentence, petitioner now asserts that either the sentence is illegal and void or that he is entitled to release to commence serving the second sentence as he has paid the fine. The claim that the sentence is illegal and void is not cognizable in this court. The petitioner's sole remedy is a motion to the sentencing court pursuant to 28 USCA § 2255.

His claim that, having paid the fine imposed in 69 Cr 894, he is entitled to release would require that this court construe the New York District Court's sentence as requiring his release from that portion of the sentence providing for imprisonment. Upon conviction of 18 USCA § 894 a defendant may be imprisoned and fined. The sentence imposed was well within the authorized penalty. Manarite's payment of the fine relieved him only of the burden imposed by that portion of the sentence directing the payment. This court has not been directed to and has not found any authority for the construction urged by the petitioner. The court concludes that it should not entertain this petition and that the petitioner's remedy is properly a motion to vacate directed to the trial court. Accordingly,

IT IS ORDERED that this action be dismissed at the cost of the petitioner and that the clerk transmit copies of this memo-

random and order to the petitioner, to his counsel of record, to the United States Attorney for the District of Kansas, and to the United States Attorney for the Southern District of New York.

Dated at Leavenworth, this 30<sup>th</sup> day of April, 1974.

(Signed) ARTHUR J. STANLEY, JR.

\_\_\_\_\_  
Senior Judge, Assigned *JS*



## United States District Court

FOR THE

DISTRICT OF KANSAS

CIVIL ACTION FILE NO. 74-19-C3

SAMUEL F. MANARITE

Petitioner

vs.

LOREN E. DAGGETT, Warden  
United States Penitentiary  
Leavenworth, Kansas

Respondent

JUDGMENT

This action came on ~~for trial~~ before the Court, Honorable Arthur J. Stanley, Jr.,  
Senior Judge, Assigned ~~to the case~~, presiding, ~~and the case having been duly tried~~  
~~and a decision having been duly rendered,~~

It is Ordered and Adjudged that all relief be denied and the action be, and it is  
hereby, dismissed at the cost of the petitioner.

FILED  
MAY 1 - 1974ARTHUR G. JOHNSON, Clerk  
By Robert Chen Deputy

Dated at Topeka, Kansas, this 1st day  
of May, 19 74.

Entered in the docket 5-1-74

ARTHUR G. JOHNSON  
Clerk of Court  
By Robert Chen  
Deputy

NOT FOR ROUTINE PUBLICATION

OCT 30 1971

UNITED STATES COURT OF APPEALS  
TENTH CIRCUIT

NO. 74-1334

SAMUEL F. MANARITE,	)	
Petitioner-Appellant,	)	
vs.	)	Appeal from the United
	)	States District Court
LOREN E. DAGGETT, Warden,	)	for the District of
United States Penitentiary,	)	Kansas (D.C.No.74-19-C3)
Leavenworth, Kansas,	)	
Respondent-Appellee.	)	

Before PICKETT, Senior Circuit Judge, and SETH and McWILLIAMS,  
Circuit Judges

PER CURIAM

Appellant Manarite petitioned the United States District Court for the District of Kansas for habeas corpus relief pursuant to 28 U.S.C. §2241. The district court dismissed the action and we affirm.

Manarite, an inmate at the United States Penitentiary, Leavenworth, Kansas, is serving two sentences imposed by the United States District Court for the Southern District of New York. These proceedings relate only to the sentence imposed on July 16, 1970 in case number 69 CR 892 for violation of 18 U.S.C. §884. The judgment of the sentencing court contained the following language:



"It is adjudged that the defendant is hereby committed to the custody of the attorney general or his authorized representative for imprisonment for a period of fifteen (15) years and fined \$5,000. The defendant is to stand committed until the fine is paid or he is otherwise discharged according to law."

Manarite paid the \$5,000 fine in full on December 18, 1973. In these proceedings, he contends that such payment satisfied the judgment in full and that he is accordingly entitled to immediate release from that sentence. In an amendment to the petition, Manarite injected a further claim that the sentence is illegal because it constitutes a judgment requiring that he be incarcerated until the fine is paid. The district court dismissed the petition, having concluded that both contentions should be presented to the sentencing court pursuant to 28 U.S.C. §2255. In this appeal, appellant presents two issues: 1) whether he has fully served the sentence imposed on him by payment of the fine; and 2) whether the sentence imposed under case number 69 CR 892 amounts to a judgment requiring that he be incarcerated until a fine is paid and is therefore illegal and void.

We agree with the district court that both issues are not cognizable pursuant to 28 U.S.C. §2241 and should be presented to the sentencing court pursuant to 28 U.S.C. §2255. Manarite's attack upon the legality of the sentence is clearly within the ambit of §2255. His reliance upon *Miller v. Willingham*, 400 F.2d 873 (10th Cir.1968) in support of his contention that he has fully served the sentence imposed is misplaced. Miller stands for the proposition that a writ of habeas corpus is a procedurally proper remedy where a federal prisoner has fully served his sentence and should be discharged from further confinement. In arguing that he has fully satisfied the sentence, Manarite is espousing what we view as a distorted construction of the sentence imposed. At best, he has presented a dispute over the terms of the sentence, a matter appropriate for presentation to the sentencing court in

a motion filed pursuant to 28 U.S.C. §2255. Strollo v. Alldredge, 463 F.2d 1195 (3rd Cir.1972)

Upon docketing, the parties were notified that we were considering summary affirmance and of their rights to file memoranda in support of their respective positions. In response thereto Manarite filed a memorandum in opposition to summary action. Nevertheless, after carefully and thoroughly reviewing the files and records in this case, we are convinced that the judgment of the district court is correct.

Affirmed.



Receipt NO. 927481

DEPARTMENT OF JUSTICE

Office of United States Attorney

~~Southern~~ District of ~~New York~~

(CHECKS ACCEPTED SUBJECT TO COLLECTION)

Claim Against

U. S. Attorney's No.

Samuel F. Manarite

69-0910

Amount Received

From

Five Thousand and 00/100 Dollars ----- \$5,000.00 ---

Agency & File No.

USDC, SDNY 69 CR. 892

PAID IN FULL

Type Claim

FINE

Am't. of Claim

\$5,000.00

DJ File No.

( ) Pre-judgment

(x) Judgment

( ) Compromise

(x) Paid in full

( ) Partial Pay No.

Date Payment Received

December 18, 1973

By

Edith Kaltman, clerk

for UNITED STATES ATTORNEY

ORIGINAL - TO PAYER

EXHIBIT "B"

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A F F I D A V I T

STATE OF NEVADA    )  
                          ) SS.  
COUNTY OF CLARK    )

JEAN MANARITE, being first duly sworn according to law, upon oath, deposes and says:

That I am the wife of SAMUEL F. MANARITE, Defendant in Case No. 69 CR 892 in the United States District Court for the Southern District of New York, entitled United States of America v. SAMUEL F. MANARITE.

That Affiant is intimately familiar with the testimony adduced during the trial and motions heard regarding the above referred to matter since Affiant was present during pertinent proceedings and has had the opportunity to review and study transcripts embodying the testimony of the parties, the comments of witnesses and the exchange between the Court and counsel.

That Affiant is aware that the Honorable EDMOND L. PALMIERI, District Judge and Trial Judge of the above referred to matter specifically asked Government counsel, STEPHEN H. SCOTT, ESQ., and VICTOR A. ROBERTS, ESQ., counsel for the prosecution's main witness, PHIL FRIMET, whether any agreements were made whatsoever of any kind with any member of the United States Attorney's Office which would effect the truthfulness of Mr. FRIMET'S testimony (Stenographer's Minutes, May 20, 1970 - 7 mmeg 90; 8 mcp 113).

That the Court was advised by both counsel for the Government and counsel for the witness for the prosecution that no such agreement was made (8 mcp 113).

That Affiant in a conversation in June of 1973, with VICTOR A. ROBERTS, ESQ. was advised that both STEPHEN H. SCOTT and JOEL FREIDMAN, Assistant United States Attorneys, did in fact have an arrangement with VICTOR A. ROBERTS, ESQ. on behalf of the prosecution witness, PHIL FRIMET, that they, representing

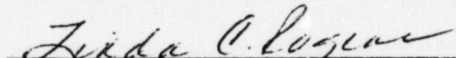


1 the United States Government, would recommend a suspended sen-  
2 tence for PHIL FRIMET in a case pending before the State Court in  
3 exchange for his cooperation in the case involving my husband,  
4 SAMUEL F. MANARITE, and in fact said STEPHEN H. SCOTT and JOEL  
5 FREIDMAN went to the trial judge in whose court PHIL FRIMET'S  
6 State action was pending and recommended a suspended sentence.

7 That Affiant believes that when this arrangement  
8 and disposition is brought to the Court's attention that the  
9 Court will recognize and appreciate the severity of the repre-  
10 sentations made to this Court by counsel during the trial and  
11 the impact that such a disclosure would have had upon the jury  
12 had the same been brought to its attention prior to their delib-  
13 erating the fate of my husband, SAMUEL F. MANARITE.

14  
15   
16 JEAN MANARITE

17 SUBSCRIBED and SWORN to before me  
18 this 16th day of January, 1974.

19   
20 NOTARY PUBLIC



Conservation June 28, 1973

ROBERTS: A guy caught in the middle. He is a guy caught in the middle. It was,nt him so much , as it was the others that you know of. They put the screws on him from various angles.

Jeanne: Yes.

ROBERTS: First of all they gave him a lot of work and they put him in hock there, and they never paid him, and they forced him to borrow money from other people there and usurious things. Then had to have his cracked open , and they did a lot of things there. Idont have to tell you what they did, you know a good part of it yourself, you heard it in court. When we come up before a distric attorney, I say to him, my man is the man in the middle, he is not the principal in these things. He will lay his cards on the table, he will tell you the story as is, he will tell you the truth, he wont lie, you can take a lie test if you want to or anything else, and I will throw myself on the mercy of the court period. Once I do that and I cooperate with them, the chances of his receiving a suspended sentence, probation and etc. , are very, very good. Especially if he has never been in trouble. before up to that time, and this has gone on for years & years & years in our system, and there is no question about it. I,ll tell you one thing if your husband had a clean record----

JEANNE: Phil, let me tell you something-----

ROBERTS: Nothing would of happened to him.

JEANNE: That is not true, that is not true and you know it. My husband's Record which I have here in front of me, is so minor there is not a serious charge on there. There misdemeanors, no convictions there are also fines , and it is nothing, and I have had his whole record cleared, so it only goes to prove to you that his record was not bad.

ROBERTS: They had a green sheet on him and that means-----

ZJEANNE: They had a green sheet and it was never shown to him or his attorney never bothered to-----

ROBERTS: W



ROBERTS:

What about the previous case he had in Staten Island , they got him on extortion.

JEANNE:

That case

ROBERTS:

That was the killer diller

JEANNE:

That was the killer diller? Why was that suppose to be used? Would a good attorney have permitted that to be used.

Wouldnt a good attorney have taken the tapes and said, now wait one moment is this legal. This tape of Phil's has ~~never~~ anybody to this point, not you , Sammys attorney ever checked to see if it was right. Did he take it to an electronic expert to see if it was proper. To see maybe there wasnt exerppts put in

there or taken out, Idont know. No it wasnt done . Let me tell you Mr Roberts you took the money from Phil that he took. A thousand dollars of it went to you for your fee, now damnit all whats right is right. Your client had an obligation. Your client was in the middle, maybe so , but your client had an obligation. Your client did not fullfill his obligation, and if you own a house Mr Roberts and you dont make your ~~mortgage~~ <sup>Bank</sup> payments they are going to foreclose on you.

ROBERTS:

The thousand dollars didnt go to me in case you dont know it..

JEANNE:

It didnt , who did it go to?

ROBERTS:

It went to another attorney that was there before me:

JEANNE.

You mean to tellme the

ROBERTS:

The attorney of the mob, lets put it that way. Ididnt get it.

JEANNE:

Let me say this, you mean to tell me that counterfeiting charges, conspiracy for pornography, grand larceny in the State of N.Y.

and a minor pornography charge in the city of N.Y.

You are going to tell me that this was given just suspended sentences or meagor, minor fines .

I could see a stiff fine but, a \$300 or \$500 whatever the devil it was, your going to tell me ther wasnt any talk of this, there

there was no discussion what so ever to help BPHIL in any of these cases. You can sit there and tell me on the phone , Im thinking that I am crazy, that this wasnt done. Your going to tell me that Scott and Joel Freidman never once in there conversation, that Phil met them at least twelve times and how many times you did, but you never discussed wheeling and dealing. We will put it in that way, a broad term of dealing and wheeling with them to get suspended sentences of fines, your going to tell me that they didnt go speak for this man, that they didnt go to the judge.

ROBERTS:

THEY RECOMMENDED THAT IS ALL THEY DID FOR ME.

JEANNE:

THEY WHAT?

ROBERTS:

THEY WENT TO THE JUDGE AND RECOMMENDED A SUSPENDED SENTENCE.

JEANNE:

THEY DID RECOMMEND A SUSPENDED SENTENCE, RIGHT?  
DID THEY?

ROBERTS:

THEY DID.

JEANNE:

THEY RECOMMENDED A SUSPENDED SENTENCE AND YOU TOLD ME UP TO THIS POINT THEY NEVER DID.

ROBERTS:

THEY RECOMMENDED IT IN THE STATE COURT.

~~YOU~~ JEANNE:

YOU SAID THEY ONLY SAID BE NICE TO HIM, THEY DIDNT RECOMMEND ANYTHING.

ROBERTS:

THEY DIDNT RECOMMEND IT IN THE FEDERAL COURT ONLY IN THE STATE COURT

JEANNE:

THEY STILL RECOMMENDED IT THOUGH.

ROBERTS:

IN THE STATE COURT.

JEANNE:

How about the counterfeiting charge. Dont tell me the treasury dept is different, they are all government. They are one conglomerate

ROBERTS:

The judge in his discretion

JEANNE:

Who was the judge for him in the counterfeiting charge.

ROBERTS:

The counterfeiting charge Idont remember now, I would have to look up my records.



JEANNE:

You mean to tell me Joel Freidman didnt go to this man.

ROBERTS:

He went up to the judge there and all he did was, said to the judge ther that he felt that this man deserved some sort of consideration, that is all he used, he didnt say suspended or any thing else, he says because he has cooperated with the goverment in full and there has been no trouble with him and the result of his testimony and others there we were able to get a conviction.

JEANNE:

Didnt he tell this to Phil before he was giving him all

ROBERTS

He never said a word. Whatever Freidman had was with me.

JEANNE: And you never told your client ?

ROBERTS:

HE REFUSED He never told my client.

JEANNE:

You never told your client.

ROBERTS:

How am I going to tell him. I have to wait to see what the outcome is before I can tell him anything. I cant tell him if Im not sure Sim not going to say to a man your going to ~~§§§~~ be given a suspended sentence when Iam not sure, its up to the judge. I never tell my clients this is what Iam going to do for you.

JEANNE:

Why I mean if you if your going

ROBERTS:

Because that is the way lawyers handle a case. If your any decent kind of a lawyer. What kind of recommendation did your atty. make for your husband. Did he promise to get him off free.

JEANNE:

My husband wasnt going to testify, My husband knew he was going away. Mr Roberts my husband knew all this because he rather go away than turn informer. This is his way of life, he cant help it. If he has got to go he is not going to take nine people with him.

He dosent beleive and Idont either. Im sorry Idont believe in that way of life. I dont beleive in hurting others. If Im guilty of something or involved in something and I am the one thats caught, why should I bring ten people with me.

ROBERTS:

Listen I will get this affidavit out for you, I have to go to court now.

JEANNE:

b Please get it out today its very very important to me.

ROBERTS:

O.K.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA :

- v - :

SAMUEL F. MANARITE, :

Defendant. :

-----X

AFFIDAVIT

69 Cr. 892

JEROME L. MERIN, being duly sworn, deposes and says:

1. I am a Special Attorney, Department of Justice, Organized Crime and Racketeering Section, assigned to the New York Joint Strike Force, and I am familiar with the matters herein.

2. Defendant MANARITE urges this Court to vacate his sentence on the grounds that the \$15,000 fine imposed is void pursuant to Williams v. Illinois, 339 U.S. 235 (1970) and, secondly, that there were undisclosed promises made to Phil Frimet and his attorney, Victor A. Roberts, Esquire, by Government attorneys.

3. Defendant's contention as to the unconstitutionality of a committed fine is premature since there is no indication that his sentence will be lengthened if he fails to pay the fine and demonstrates that he is indigent. Indeed, this office has been informed by the Collection Division of the United States Attorney's Office for the Southern District of New York that it is the policy of that office not to seek prolongation of a sentence for failure to pay a fine if the defendant is found to be a pauper. In any event, until additional commitment is sought or ordered, defendant's complaint is premature.

4. No promises were made to Phil Frimet or his attorney with regard to Indictment 69 Cr. 892. The affidavit of Victor A. Roberts, Esquire, counsel to Mr. Frimet, completely contravenes the allegations of Jean Manarite and is attached hereto as Exhibit A.



5. The letter to the District Attorney of Kings County was promised well after the trial in 69 Cr. 892 and was written with regard to Mr. Frimet's testimony in 69 Cr. 747, a pornography trial before the Honorable Lloyd MacMahon which took place in October of 1970. A copy of the relevant portions of Mr. Frimet's testimony in that case is attached hereto as Exhibit B.

6. For the reasons stated above, it is respectfully urged that defendant's petition is groundless and should be dismissed.

*Jerome L. Merin*  
 JEROME L. MERIN  
 Special Attorney  
 Department of Justice

Subscribed and sworn to before me  
 this 28 day of June 1974.

*Charles F. Pettit*  
*Notary Public*  
*Box 114*  
*Com Ap 30 Mar Fl.*

JLM:jd

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA :

- v - :

SAMUEL F. MANARITE :

Defendant. :

AFFIDAVIT

69 Cr. 892

-----X  
VICTOR A. ROBERTS, ESQ., being duly sworn, deposes and says:

1. I am an attorney-at-law and a member in good standing of the Bar of the State of New York.

2. I represented Phillip Frimet in 1970 prior to and during the proceedings against defendant, SAMUEL F. MANARITE, and continued to represent Mr. Frimet in other matters thereafter.

3. I have read the papers filed on behalf of SAMUEL F. MANARITE, moving to vacate his sentence, and I have read the supporting affidavit of JEAN MANARITE.

4. I never stated to JEAN MANARITE or to anyone else the remarks which she has attributed to me on lines 28 through 32 of page 1 of her affidavit and lines 1 through 6 of her affidavit with regard to promises by the Government attorneys.

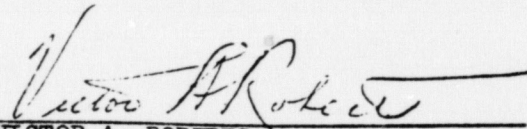
5. At no time, concerning the proceedings against defendant MANARITE, were promises made by anyone in or associated with the United States Government with regard to my client.

6. About six months after the conviction of SAMUEL F. MANARITE, in connection with another case, United States of America v. MANARITE unrelated to 69 Cr. 892, Government prosecutors promised to send a letter to the sentencing judge in the State Court making known the extent of Frimet's cooperation if Frimet testified on behalf of the Government. Frimet did so testify and such a letter was ultimately sent.

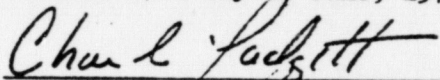
EXHIBIT A



7. Since 1973, I have received numerous calls from JEAN MANARITE seeking me to submit an affidavit alleging the facts stated in her own affidavit now before the Court. Each time the offer was made, I refused telling her that the statements were untrue.

  
VICTOR A. ROBERTS

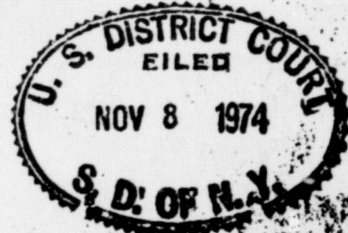
Sworn and subscribed before me  
on this 27th day of June, 1974

  
Notary Public  
Bron County  
Com Exp 30 Apr 76.

E.P. CR 10

MEMO 536

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----  
SAMUEL F. MANARITE,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.  
-----

74 Civ. 2747  
E.L.P.

#41413

PALMIERI, J.

This is a motion to vacate sentence pursuant to  
28 U.S.C. § 2255.

In 1969 Samuel F. Manarite and Richard J. Portela  
were indicted for using extortionate means to collect or  
attempt to collect an extension of credit in violation of  
18 U.S.C. §§ 994 and 2. Upon trial the jury found Manarite  
guilty and acquitted Portela. Manarite's conviction was  
subsequently affirmed by the United States Court of Appeals  
for the Second Circuit, United States v. Manarite, 434 F.2d  
1069 (1970), and the United States Supreme Court denied  
certiorari, Manarite v. United States, 402 U.S. 972 (1971).



ONLY COPY AVAILABLE

[I]

Petitioner's Challenge to the Constitutionality of Committed Fines is Without Basis in Law.

On July 16, 1970, the following sentence was imposed upon petitioner:

"It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of FIFTEEN (15) YEARS and FINED \$5,000.00. The defendant is to stand committed until the fine is paid or he is otherwise discharged according to law."  
United States of America v. Kanarite,  
69 Cr. 802, Judgment.

Petitioner now claims that this sentence is "illegal and void in that it amounts to a judgment requiring him to be incarcerated until a fine is paid, and such sentence is void under the Constitution of the United States. Williams v. Illinois, 399 U.S. 235 (1970); Morris v. Schoonfield, 399 U.S. 508 (1970); Tate v. Short, 401 U.S. 395 (1971), and their progeny."

Petitioner's reliance on Williams in his attack on committed fines is wholly misplaced. Williams protects the indigent defendant from being continued in confinement because of "an involuntary nonpayment of a fine . . .", 399 U.S. at 241, emphasis added. It is not an escape hatch for those who can afford to pay their fines. The imposition

[2]

of a committed fine becomes offensive under Williams if, at the end of his sentence, the indigent defendant is denied release because penury precludes his paying it. Not only is petitioner not an indigent, as his petition admits, but he has paid his fine in full. Williams is therefore completely inapplicable to his case. In any event, even if petitioner were indigent, his claim would be premature. Unless he can demonstrate that his sentence has been increased because of nonpayment of his fine, he lacks standing to assert a deprivation of his rights. See Tilston v. Ullman, 318 U.S. 41 (1943).

Petitioner's citation of Tate is equally inapposite. The Court there stated unequivocally, "[w]e emphasize that our holding today does not suggest any constitutional infirmity in imprisonment of a defendant with the means to pay a fine who refuses or neglects to do so." 401 U.S. at 400.

Petitioner also asserts that as the judgment of the court states that the petitioner is to stand committed until he pays the fine, "by implication, upon payment of the fine, Petitioner should have been released from confinement under this sentence." Petitioner's committed fine was a penalty separate and apart from his prison term. This assertion is a mere conjuring with words.



[II]

Petitioner's Claim of Prejudice Owing to  
an Undisclosed Agreement Between Govern-  
ment Counsel and Counsel for the Prosecu-  
tion's Chief Witness is Without Basis in Fact.

Petitioner bases a second claim for vacating of his sentence on an allegation of undisclosed promises between government counsel and counsel for its chief witness, in violation of Giglio v. United States, 405 U.S. 150 (1972). The claim is false and unrelated to this case. Petitioner relies upon a telephone conversation between his wife and counsel for the prosecution witness, which petitioner's wife taped without the knowledge or consent of the attorney, wherein the attorney acknowledged that the Government had recommended a suspended sentence for his client on charges pending in a New York State Court. <sup>1</sup> Nowhere in this conversation is there any reference to the time at which government counsel offered to make this recommendation.

The sentence which petitioner here seeks to vacate was imposed in 69 Cr. 892, a case tried in May, 1970. In October, 1970, petitioner's case 69 Cr. 747, a completely separate charge, came before another judge of this court. It was in connection with the latter case, and well after petitioner was sentenced in 69 Cr. 892, that a promise of help on the state charges was made to witness's counsel

ONLY COPY AVAILABLE

in exchange for his client's cooperation. <sup>2</sup> The trial minutes record that this promise was brought out fully in open court, see United States of America v. Manarite, et al., 69 Cr. 747, Stenographer's Minutes, October 6, 7, 1970, at 104-105.

Petitioner's claims are without basis in law or fact, and the motion is denied. It is so ordered.

Dated: New York, N. Y.  
November 8, 1974

EDMUND L. PALMIERI  
U. S. D. J.

EDMUND L. PALMIERI  
U. S. D. J.



FOOTNOTES

1. The conversation is between the attorney for prosecution witness Phillip Frimet, and Jeanne Manarite, wife of the petitioner. The pertinent part of the transcript and the part emphasized by petitioner reads as follows:

"ATTORNEY: THEY RECOMMENDED THAT IS ALL THEY DID FOR ME.

JEANNE: THEY WHAT?

ATTORNEY: THEY WENT TO THE JUDGE AND RECOMMENDED A SUSPENDED SENTENCE.

JEANNE: THEY DID RECOMMEND A SUSPENDED SENTENCE, RIGHT? DID THEY?

ATTORNEY: THEY DID.

JEANNE: THEY RECOMMENDED A SUSPENDED SENTENCE AND YOU TOLD ME UP TO THIS POINT THEY NEVER DID.

ATTORNEY: THEY RECOMMENDED IT IN THE STATE COURT.

JEANNE: YOU SAID THEY ONLY SAID BE NICE TO HIM, THEY DIDN'T RECOMMEND ANYTHING.

ATTORNEY: THEY DIDN'T RECOMMEND IT IN THE FEDERAL COURT ONLY IN THE STATE COURT.

JEANNE: THEY STILL RECOMMENDED IT THOUGH.

ATTORNEY: IN THE STATE COURT."

2. The affidavit of the attorney for prosecution witness Phillip Frimet in 69 Cr. 892 and 69 Cr. 747, dated June 27, 1974, states the following:

"6. About six months after the conviction of SAMUEL F. MANARITE, in connection with another case, United States of America v. MANARITE [69 Cr. 747] unrelated to 69 Cr. 892, Government prosecutors promised to send a letter to the sentencing judge in the State Court making known the extent of Frimet's cooperation if Frimet testified on behalf of the Government. Frimet did so testify and such a letter was ultimately sent."

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SAMUEL F. MANARITE,

Petitioner,

74 CIV. 2747 (ELP)

-v-

NOTICE OF APPEAL

UNITED STATES OF AMERICA,

Respondent.

S I R :

PLEASE TAKE NOTICE, that the above-named petitioner hereby appeals to the United States Court of Appeals for the Second Circuit from an order entered November 8, 1974, denying petitioner's motion for a writ of habeas corpus pursuant to 28 U.S.C. §2255, and from each and every part of said order.

Dated: New York, N.Y.  
January 7, 1975.

Yours, etc.  
OSCAR B. GOODMAN  
Attorney for Petitioner  
230 Las Vegas South  
Las Vegas, Nevada 89101  
(702) 384-5563

By Ivan S. Fisher

TO:

CLERK  
United States District Court  
Foley Square  
New York, New York 10007

HON. PAUL J. CURRAN  
United States Attorney  
United States Courthouse  
Foley Square  
New York, New York 10007



IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

---

Docket No. 75-2013

---

UNITED STATES OF AMERICA,  
Respondent,  
versus  
SAMUEL MANARITE,  
Appellant.

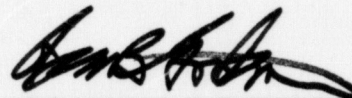
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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

CERTIFICATE OF SERVICE BY MAILING

The undersigned hereby certifies that two (2) true and correct copies of the foregoing Appendix of Appellant was, on this 25th day of March, 1975, mailed, postage prepaid, to United States Attorney, Southern District of New York, United States Federal Courthouse, Foley Square, New York, New York.



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OSCAR B. GOODMAN

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

---

Docket No. 75-2013

---

UNITED STATES OF AMERICA,  
Respondent,  
versus  
SAMUEL MANARITE,  
Appellant.

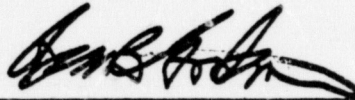
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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

CERTIFICATE OF SERVICE BY MAILING

The undersigned hereby certifies that two (2) true and correct copies of the foregoing Appendix of Appellant was, on this 25th day of March, 1975, mailed, postage prepaid, to United States Attorney, Southern District of New York, United States Federal Courthouse, Foley Square, New York, New York.

  
\_\_\_\_\_  
OSCAR B. GOODMAN



LAW OFFICES  
**GOODMAN AND SNYDER**

230 LAS VEGAS BOULEVARD SOUTH  
LAS VEGAS, NEVADA 89101

OSCAR B. GOODMAN  
JEROME F. SNYDER  
JEROME L. BLUT  
DOUGLAS G. CROSBY  
GERALD M. WELT  
STEPHEN STEIN

OF COUNSEL  
JAMES D. SANTINI  
U.S. HOUSE OF REPRESENTATIVES

TELEPHONE  
(702) 384-5563

March 25, 1975

Office of the Clerk  
United States Court of Appeals  
Second Circuit  
United States Courthouse  
Foley Square  
New York, New York 10007

Re: Samuel F. Manarite vs. U.S.A.  
Docket No. 75-2013

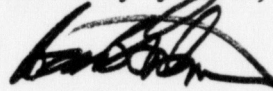
Dear Sir:

Enclosed herewith please find twenty-five (25) copies  
of Appendix of Appellant.

Would you be kind enough to please file same and notify  
this office thereafter.

Your cooperation is appreciated.

Sincerely yours,



OSCAR B. GOODMAN

OBG:lw

Enclosures:  
As Stated

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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Docket No. 75-2013

---

UNITED STATES OF AMERICA,  
Respondent,

versus

SAMUEL MANARITE,  
Appellant.

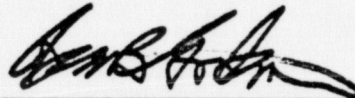
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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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\_\_\_\_\_  
OSCAR B. GOODMAN



